THE

LAW AND PRACTICE

OF THE

COUNTY COURTS

IN

ENGLAND AND WALES,

COMPRISING

The Rules, Instructions, Forms, and all the Cases decided in the Superior Courts and in the County Courts.

THIRD EDITION,

CONTAINING THE ALTERATIONS MADE BY THE EXTENSION ACT, THE CASES UP TO THE PRESENT TIME, THE NEW SCALE OF FEES, AND MR. SERJEANT DOWLING'S RULES AND ORDERS.

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PREFACE

TO THE SECOND EDITION.



In consequence of the important alterations made by the Extension Act of last Session, the Authors of this Treatise have reprinted such portions of it as were affected by the provisions of the new Statute, adding the new Forms required and the principal Cases decided to this time. The new Statute has also been subjoined, with notes, so as to adapt the whole work to the present state of the Law and Practice of the County Courts.

Temple,
1st October, 1850.

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THE

LAW AND PRACTICE

COUNTY COURTS,

ESTABLISHED UNDER STATUTE 9 & 10 VICT. c. 95

BOOK I.

THE COURTS.

Although the New Local Courts have been termed County Courts, it must not be supposed that they are in any manner identical with, or even related to, the ancient County Courts of England. The name of the latter only has been given to them, probably because a familiar one to the popular ear. But in their jurisdiction, in their powers, and in their practice, the New County Courts bear no resemblance to the Courts they have superseded.

In these circumstances, upon mature reflection, it has been deemed most convenient to the practitioner and the public strictly to confine the present treatise to the Law and Practice of the New Courts, as determined by the statute creating them, by the rules framed by the Judges, and by the decisions of the

Superior Courts, as to their jurisdiction, and of themselves, as to their practice. Such a course appears to be preferable to one that would perplex the reader by the introduction of queries and commentaries suggested by cases relating to the Courts now abolished, and whose decisions it would be dangerous to apply to Courts so different in their origin and so unlike in their powers and processes. Avoiding, therefore, merely curious questions, and looking upon the County Courts Act, and the rules of practice framed in pursuance of its provisions, as the foundation of an entirely new Code relating to the recovery of small debts and demands, it is proposed, as nearly as possible, to confine the present treatise to a convenient classification of the law *as it is*, and to omit reference to the law *as it was*, excepting when resort to it may be absolutely essential to the clear understanding of the subject-matter.

1. *Creation of the New County Courts.*—The New County Courts, then, are created by statute 9 & 10 Vict. c. 95, intituled "*An Act for the more easy Recovery of Small Debts and Demands in England.*"

It is remarkable, that Wales has been omitted from the title and from the body of this Act. But the omission is practically unimportant, for it is established law that, though not expressly named, the provisions of any statute relating to England are held to include Wales, unless the Principality be expressly excepted.

2. *The Preamble.*—The Preamble to this statute is unusually long and explicit. It sets forth minutely the design of the Legislature in the enactment that follows, and it requires to be carefully read and remembered, because it is to be called in aid of the construction of any portion of the Act whose meaning may be dubious; for a statute is to receive such an interpretation as will best accomplish the design of the Legislature, unless the words are so plain as to over-ride the apparent intent. Substantially, then, the Preamble to this statute, after reciting that various local Acts had passed for the recovery of small debts in certain localities, and that by another statute arrest on final process under £20 had been abolished, and by another certain remedies had been given to judgment creditors in respect of such debts, and by this Act the Queen in Council was empowed to extend

the jurisdiction of the local Courts, and alter their districts and practice, proceeds to state that "it is expedient that *one rule and manner* of proceeding for the recovery of small debts and demands should prevail throughout England."

Reciting, then, that the County Court is a Court of ancient jurisdiction, and that the proceedings therein are dilatory and expensive, it states that it is expedient "to alter and regulate the manner of proceeding in the said Courts for the recovery of small debts and demands, and that the said local Courts should be holden "*as branches of the County Court* under the provisions of this Act, and that power should be given to Her Majesty to effect these changes;"—it is then enacted as therein after is expressed.

The section is as follows:

Sect. 1. Whereas sundry Acts of Parliament have been passed from time to time for the more easy and speedy recovery of small debts within certain towns, parishes, and places in England: and whereas by an Act passed in the eighth year of the reign of Her Majesty, intituled "An Act to amend the Laws of Insolvency, Bankruptcy, and Execution," arrest upon final process in actions of debt not exceeding twenty pounds was abolished, except as to certain cases of fraud and other misconduct of the debtors therein mentioned: and whereas by an Act passed in the ninth year of the reign of Her said Majesty, intituled "An Act for the better securing the Payment of Small Debts," further remedies were given to judgment creditors, in respect of debts not exceeding twenty pounds, for the discovery of the property of debtors, and punishment of frauds committed by them: and whereas by the last-mentioned Act Her Majesty is enabled, with the advice of her Privy Council, to extend the jurisdiction of certain Courts of Requests and other Courts for the recovery of small debts to all debts and demands, and all damages arising out of any express or implied agreement, not exceeding twenty pounds, and also to enlarge, and in certain cases to contract the district of such Courts, and make certain other alterations in the practice of such Courts in manner in the now-reciting Act mentioned; and it is expedient that the provisions of such Acts should be amended, and that one rule and manner of proceeding for the

Preamble.

7 & 8 Vict. c. 96.

8 & 9 Vict. c. 127.

BOOK I. THE COURTS.

Preamble.

recovery of small debts and demands should prevail throughout England: and whereas the County Court is a Court of ancient jurisdiction having cognizance of all pleas of personal actions to any amount by virtue of a writ of *justicies* issued in that behalf: and whereas the proceedings in the County Court are dilatory and expensive, and it is expedient to alter and regulate the manner of proceeding in the said Courts for the recovery of small debts and demands, and that the Courts established under the recited Acts of Parliament, or such of them as ought to be continued, should be holden after the passing of this Act as branches of the County Court under the provisions of this Act, and that power should be given to Her Majesty to effect these changes at such times and in such manner as may be deemed expedient by Her Majesty, with the advice of her Privy Council: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that it shall be lawful for Her Majesty, with the advice of her Privy Council, from time to time to order that this Act shall be put in force in such county or counties as to Her Majesty, with the advice aforesaid, from time to time shall seem fit; and this Act shall extend to those counties concerning which any such order shall have been made, and not otherwise or elsewhere: provided always, that no Court shall be established under this Act in the city of London.

Her Majesty may order this Act to be put in execution.

3. *Local Courts.*—By section 5 provision is made for certain districts having local Courts, as follows:

Section 5.

Her Majesty may order any Court under Acts in schedules (A.) and (B.) to be held as a County Court, and may assign a district to the same.

Sect. 5. And be it enacted, That it shall be lawful for Her Majesty, with the advice of her Privy Council, to order that any Court holden for the recovery of small debts or demands within the provisions of any Act cited in either of the schedules annexed to this Act, and marked (A.) and (B.) respectively, shall be holden as a County Court; and it shall be lawful for Her Majesty, with the advice aforesaid, to assign a district to every such Court, either greater or less than the district in which the Court holden under the provisions of any such Act now has jurisdiction, and to alter the place of holding any such Court, or to order that any such Court be abolished; and every such Court shall continue to be holden under the Act according

to which it is now constituted or regulated until the time mentioned in any such order which shall be made with reference to such Court; and from and after the time mentioned in any such order the Act or Acts under which such Court is now constituted, so far as the same relate to the establishment or jurisdiction or practice of a Court for the recovery of small debts or demands, shall be repealed, but not so as to revive any Act thereby repealed; and such Court so ordered to be holden as a County Court shall thenceforth be holden as a County Court under this Act, and in all respects as if it had been originally constituted under the provisions of this Act.

These Schedules are as follow:

SCHEDULE. (A.)

Schedule (A.)

Acts for the more easy and speedy Recovery of Small Debts within the Towns, Parishes, and Places under written, and other Parishes and Places adjacent; that is to say,

Ashton-under-Lyne	48 Geo. 3, c. xcviii.
Bath	45 Geo. 3, c. lxvii.
Beverley	46 Geo. 3, c. cxxxv.
Birmingham	47 Geo. 3, c. xiv.
Blackheath	47 Geo. 3, c. iv.
Bolingbroke and Horncastle	47 Geo. 3, Sess. 2, c. lxxviii.
Boston	47 Geo. 3, Sess. 2, c. i.
Bradford	47 Geo. 3, Sess. 2, c. xxxix.
Bristol	56 Geo. 3, c. lxxvi.
Bristol	7 Will. 4 & 1 Vic. c. lxxxiv.
Brixton	46 Geo. 3, c. lxxxviii.
Broseley	22 Geo. 3, c. xxxvii.
Canterbury	25 Geo. 2, c. xlv.
Chippenham	5 Geo. 3, c. ix.
Cirencester	32 Geo. 3, c. lxxvii.
Codsheath	48 Geo. 3, c. l.
Deal	26 Geo. 3, c. xviii.
Derby	6 Geo. 3, c. xx.
Doncaster	4 Geo. 3, c. xl.
Dover	24 Geo. 3, c. viii.
Ecclesall	48 Geo. 3, c. ciii.
Elloe	47 Geo. 3, c. xxxvii.

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Schedule (A.)

Ely, Isle of	18 Geo. 3, c. xxxvi.
Exeter	13 Geo. 3, c. xxvii.
Faversham	25 Geo. 3, c. vii.
Folkestone	26 Geo. 3, c. xcviii.
Gloucester	1 Will. & Mary, c. xviii.
Gravesend	47 Geo. 3, Sess. 2, c. xl.
Grimsby, Great	46 Geo. 3, c. xxxvii.
Hagnaby	18 Geo. 3, c. xxxiv.
Halesowen	47 Geo. 3, c. xxxvi.
Ipswich	47 Geo. 3, Sess. 2, c. lxxix.
Kidderminster	12 Geo. 3, c. lxvi.
King's-Lynn	10 Geo. 3, c. xx.
Kingston-upon-Hull	48 Geo. 3, c. cix.
Kirkby in Kendal	4 Geo. 3, c. xli.
Lincoln	24 Geo. 2, c. xvi.
Liverpool	6 & 7 Will. 4, c. cxxxv.
Manchester	48 Geo. 3, c. xliii.
Margate	47 Geo. 3, Sess. 2, c. vii.
Middlesex	23 Geo. 2, c. xxxiii.
Newcastle-upon-Tyne	1 Will. & Mary, c. xvii.
Norwich	12 & 13 Will. 3, c. vii.
Old Swinford	17 Geo. 3, c. xix.
Pontefract Honor	2 & 3 Vict. c. lxxxv.
Poulton	10 Geo. 3, c. xxi.
Rochester	48 Geo. 3, c. li.
Saint Albans	25 Geo. 2, c. xxxviii.
Saint Briavels	5 & 6 Vict. c. lxxxiii.
Sandwich	47 Geo. 3, c. xxxv.
Sheffield	48 Geo. 3, c. ciii.
Shrewsbury	23 Geo. 3, c. lxxiii.
Southwark and East Brixton	4 Geo. 4, c. cxxiii.
Stockport	46 Geo. 3, c. cxiv.
Tower Hamlets	2 Will. 4, c. lxv.
Westbury	48 Geo. 3, c. lxxxviii.
Westminster	24 Geo. 2, c xlii.
Wight, Isle of	46 Geo. 3, c. lxvi.
Wolverhampton	48 Geo. 3, c. cx.
Wraggoe	19 Geo. 3, c. xliii.
Yarmouth, Great	31 Geo. 2, c. xxiv.

SCHEDULE (B.)

Acts for the more easy and speedy Recovery of Small Debts within the Towns, Parishes, and Places under written, and other Parishes and Places adjacent thereto; that is to say,

Aberford	2 & 3 Vict. c. lxxxvi. 3 Vict. c. xxxiii.
Ashby-de-la-Zouch	1 Vict. c. xv.
Barnsley	1 & 2 Vict. c. xc.
Belper	2 & 3 Vict. c. xcviii.
Blackburn	4 & 5 Vict. c. lxvii.
Blackheath	6 & 7 Will. 4, c. cxx. 1 & 2 Vict. c. lxxxix.
Bolton	3 Vict. c. xviii.
Brighton	3 Vict. c. x.
Burnley	4 & 5 Vict. c. lxxxiii.
Bury	2 & 3 Vict. c. ci.
Chesterfield	2 & 3 Vict. c. civ.
Crediton	8 & 9 Vict. c. lxxix.
East Retford	4 & 5 Vict. c. lxxxvii.
Eckington	2 & 3 Vict. c. ciii.
Exeter	4 & 5 Vict. c. lxxiii.
Gainsburgh	4 & 5 Vict. c. lxxxvi.
Glossop	2 & 3 Vict. c. lxxxviii.
Grantham	2 & 3 Vict. c. lxxxix.
Halifax	2 & 3 Vict. c. cvi.
Hatfield	4 & 5 Vict. c. lxxiv.
Hinckley	7 Will. 4, c. viii.
Hyde	3 & 4 Will. 4, c. cxix.
Kingsnorton	4 & 5 Vict. c. lxxv.
Launceston	4 & 5 Vict. c. lxxvi.
Leicester	6 & 7 Will. 4, c. cxxiii. 7 Will. 4, c. vii.
Loughborough	7 Will. 4, c. ix.
Newark	4 & 5 Vict. c. lxxix.
New Sarum	4 & 5 Vict. c. lxxxiv.
New Sleaford	4 & 5 Vict. c. lxxxv.
Newton Abbott	3 Vict. c. xxv.
Nottingham	2 & 3 Vict. c. cv.
Oakham	1 Vict. c. xxxvi.
Prestbury Division of the Hundred of Macclesfield	6 Will. 4, c. xiii.

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Schedule (B.)

Prestwich-cum-Oldham	2 & 3 Vict. c. c.
Roborough	7 Will. 4, c. lxii.
Rochdale.................................	2 & 3 Vict. c. xc.
Rotherham	2 & 3 Vict. c. lxxxvii.
Saint Helen's	4 & 5 Vict. c. lxxxii.
Staffordshire Potteries...............	4 & 5 Vict. c. lxxxi.
Tavistock	3 Vict. c. lxviii.
Totnes..................................	4 & 5 Vict. c. lxxx.
Warrington............................	2 & 3 Vict. c. xci.
Westminster	6 & 7 Will. 4, c. cxxxvii.
Wigan	4 & 5 Vict. c. lxxviii.
Wirksworth...........................	2 & 3 Vict. c. cii.

It was proposed to establish the New Courts in a few districts only at first, by way of experiment; but, upon further deliberation, it was deemed most expedient to bring the Act into operation simultaneously throughout the country. Accordingly, the full powers given by the first and second sections of the Act were exercised; the second section being as follows:—

Section 2.

Counties to be divided into districts.

Sect. 2. And be it enacted, That it shall be lawful for Her Majesty, with the advice aforesaid, to divide the whole or part of any such county, including all counties of cities and counties of towns, cities, boroughs, towns, ports, and places, liberties and franchises therein contained, or thereunto adjoining, into districts, and to order that the County Court shall be holden for the recovery of debts and demands under this Act in each of such districts, and from time to time to alter such districts as to Her Majesty, with the advice aforesaid, shall seem fit, and to order from time to time that the number of districts in and for which the Court shall be holden shall be increased until the whole of such county shall be within the provisions of this Act, and with the advice aforesaid to alter the place of holding any such Court, or to order that the holding of any such Court be discontinued, or to consolidate any two or more of such districts, and from time to time, with the advice aforesaid, to declare by what name and in what towns and places the County Court shall be holden in each district; and if it shall appear to Her Majesty that any part of any county, liberty, city, borough, or district may conveniently be declared within

the jurisdiction of the County Court of an adjoining county, it shall be lawful for Her Majesty, with the advice aforesaid, to order that such part shall be taken to be within the jurisdiction of the County Court holden for the purposes of this Act for such adjoining county in and for such district as Her Majesty shall order, in like manner as if it were part of such adjoining county.

Section 2.

And by section 8 it is thus provided:

Section 8.

Orders in Council to be published in the London Gazette.

Sect. 8. And be it enacted, That any order in Council made for the purposes of this Act shall be published in the *London Gazette;* and notice of the intention of Her Majesty to take into consideration the propriety of making any such order shall be published in the *London Gazette* one calendar month at least before any such order shall be made.

4. *Orders in Council.*—In pursuance of the powers thus vested in the Privy Council, the following notice was published in the *London Gazette* of Tuesday, March 9, 1847:—

At the Court at Osborne-House, the 9th day of March, 1847.

PRESENT,

The QUEEN'S MOST EXCELLENT MAJESTY in Council.

Notice in London Gazette of Tuesday, March 9, 1847, relating to the Courts of

WHEREAS there was this day read at the Board an Order in Council, dated the fourth day of February last, whereby it was ordered, that notice should be given in the *London Gazette,* that after the expiration of one calendar month from the date of the publication of that order and notice, Her Majesty, with the advice of her Privy Council, would take into consideration the propriety of making the two several orders therein specified, for the purposes of an Act passed in the last session of Parliament, intituled "An Act for the more easy Recovery of Small Debts and Demands in England:"

And whereas notice of the said order was given accordingly, and published in the *London Gazette* on Saturday, the sixth day of February last:

Her Majesty, having taken the premises into consideration, is thereupon pleased, by and with the advice of her Privy Council, to order, and it is hereby ordered, that on the thirteenth day of March in this year, the several Courts holden for the recovery of small debts or demands, under the provisions

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Order in Council.

of any Act or Acts cited in one or both of the schedules annexed to the said Act of the last session of Parliament, and marked (A.) and (B.) respectively, shall be abolished, except a Court holden for the manor of Sheffield, under an Act passed in the forty-eighth year of the reign of his late Majesty King George the Third, intituled "An Act for regulating the Proceedings in the Courts Baron of the Manors of Sheffield and Ecclesall, in the county of York;" and excepting also the Courts hereinafter more particularly specified; and that, on and after the fifteenth day of March in this year, the County Court of Middlesex, heretofore holden under the provisions of an Act passed in the twenty-third year of the reign of his late Majesty King George the Second, intituled "An Act for preventing Delays and Expenses in the Proceedings in the County Court of Middlesex, and for the more easy and speedy Recovery of Small Debts in the said County Court," shall be holden under the provisions of the said Act of the last session of Parliament, in the several districts into which the said county shall be divided, by any order to be made by Her Majesty, with the advice of her Privy Council; and also that each of the several Courts of Request or Conscience heretofore holden for the recovery of debts and demands in the several cities, towns, and places hereinafter mentioned within the provisions of some one or more of the Acts cited in the schedule annexed to the said Act of the last session of Parliament, and marked (A.), shall be holden as a County Court on and after the said fifteenth day of March, in the city or town hereinafter mentioned to be respectively appointed or substituted, instead of the city or cities, town or towns, place or places in which such Court was or might have been holden under the provisions of any of the said Acts; that is to say,

Sheffield and Ecclesall.

Middlesex.

Courts in schedule (A.)

Bath.

A Court heretofore holden at Bath, under an Act passed in the forty-fifth year of the reign of His late Majesty King George the Third, intituled "An Act for the more speedy and easy Recovery of Small Debts in the City of Bath and the Liberties thereof, and in the several Parishes and Places therein mentioned, in the County of Somerset," shall be holden as a County Court in the city of Bath:

Bristol.

Two Courts heretofore holden at Bristol; that is to say, one Court holden under an Act passed in the fifty-sixth year of the

reign of his late Majesty King George the Third, intituled "An Act for the more speedy and easy Recovery of Small Debts in the City and County of the City of Bristol and the Liberties thereof, and in the several Parishes and Places therein mentioned, in the Counties of Gloucester and Somerset;" and another Court holden under an Act passed in the first year of the reign of Her Majesty, intituled "An Act for granting more effectual Powers for the Regulation of the Court of Conscience within the City of Bristol," shall be consolidated and holden as a County Court in the city of Bristol: *Order in Council.*

A Court, other than the Court of Passage, heretofore holden for the recovery of small debts in Liverpool, under an Act passed in the seventh year of the reign of His late Majesty King William the Fourth, intituled "An Act to amend and render more effectual an Act passed in the Fourth and Fifth Year of the Reign of His present Majesty, intituled 'An Act for amending the Proceedings and Practice of the Court of Passage of the Borough of Liverpool, in the County Palatine of Lancaster,' and to repeal an Act passed in the twenty-fifth year of the reign of His late Majesty King George the Second, intituled 'An Act for the more easy and speedy Recovery of Small Debts in the Town and Port of Liverpool and Liberties thereof, in the County Palatine of Lancaster,' and to give further Power for the Recovery of Small Debts within the Borough of Liverpool," shall be holden as a County Court in the town of Liverpool: Liverpool.

And that the district to be assigned to each of the said Courts, when so holden as a County Court, shall be the district which by any order to be made by Her Majesty, with the advice of her Privy Council, shall be specified as the district of the County Court holden in each of the said cities and towns respectively.

Wm. L. Bathurst.

At the Court at Osborne House, the 9th day March, 1847.

PRESENT,

The Queen's Most Excellent Majesty in Council.

Notice in London Gazette of Tuesday, March 9, 1847, appointing districts.

Whereas there was this day read at the Board an Order in Council, dated the fourth day of February last, whereby it was ordered, that notice should be given in the *London Gazette*, that after the expiration of one calendar month from the date

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Order in Council.

of the publication of that order and notice, Her Majesty, with the advice of her Privy Council, would take into consideration the propriety of making the two several orders therein specified, for the purposes of an Act passed in the last session of Parliament, intituled "An Act for the more easy Recovery of Small Debts and Demands in England:"

And whereas notice of the said order was given accordingly, and published in the *London Gazette* on Saturday, the sixth day of February last:

Act to be put in force on 15th of March, 1847.

Her Majesty, having taken the premises into consideration, is thereupon pleased, by and with the advice of her Privy Council, to order, and it is hereby ordered, that, on the fifteenth day of March in this year, the said Act of the last session of Parliament shall be put in force in every county throughout England and Wales; and that the whole of the said counties, including all counties of cities and counties of towns, cities, boroughs, towns, ports, and places, liberties and franchises therein contained or thereunto adjoining, except the city of London, and excepting also the Superintendent Registrar's district of Ecclesall Bierlow and Sheffield, and so much of the Superintendent Registrar's district of Wortley as is not hereinafter specified as part of the district of the County Court of Yorkshire, holden at Barnsley, shall be divided into the several districts hereinafter specified; and that the County Court of each of the said counties shall be holden for the recovery of debts and demands under the said Act, in each of the districts into which such county shall be so divided, in the several cities and towns hereinafter specified as Court towns, or towns in which Courts are to be holden in each county, in conjunction with the said districts respectively, except in the districts hereinafter called Metropolitan Districts, in each of which the Court shall be holden in some convenient place within such district; and in each district, except in the said Metropolitan Districts, the said Court shall be holden by the name of "The County Court of , holden at ," inserting in the first blank space the name of the county, and in the second the name of the town in which the Court is to be holden; and in the said Metropolitan Districts, the said Court shall be holden by the name of "The County Court of ," inserting in the first blank space the name hereinafter given to the Court,

Style of the County Courts.

Style of the Metropolitan Districts.

and in the second the name of the county in which the Court is to be holden.

Order in Council.

Places named to mean Superintendent Registrar's districts.

And that in the description of the said several Court districts hereunto annexed, unless where specific mention is made of particular parishes, chapelries, townships, tithings, hamlets, or precincts, the several places named are to be taken to mean and imply the several Superintendent Registrar's districts, bearing the like names respectively, which have been constituted pursuant to an Act passed in the seventh year of the reign of his late Majesty King William the Fourth, intituled "An Act for registering Births, Deaths, and Marriages in England," or pursuant to any Act passed for the amendment thereof, as the same were severally constituted on the nineteenth day of December last past; save only, that all parts of parishes and chapelries, townships, tithings, and hamlets, which are detached from the main body of the parishes and chapelries, townships, tithings, and hamlets to which such detached parts severally belong, and also all places (if any), parochial or extra-parochial, not included in the said descriptions (except those hereinbefore excepted), shall be taken to be within the district of that Court within the precincts and outer boundary of which they severally lie, or by which they are severally surrounded, or with which they have the greatest common boundary, if not wholly surrounded by any one Court district; and that each of the said Court districts shall be deemed to include also all rivers, creeks, harbours, and waters included within the outer boundary thereof, or thereunto adjoining, which are within the body of any county in England or Wales; and that where the districts of any two Courts shall be divided by a river, the boundary line between the two districts shall be the mid-channel of such river; and that every place included within the outer boundary of the Court districts so specified and described shall be taken to be within the jurisdiction of the County Court holden for the purposes of the said Act for the county in which the city, town, or place is situated where the Court is ordered to be holden, or where such city, town, or place may be situated in two or more counties, then of the County Court holden for that county under which such city, town, or place is mentioned in the description of the said several Court districts hereunto annexed, in like manner as if it were part of such county.

In what district detached places shall be.

What each district shall include.

Boundaries of districts

Orders in Council.

And that the description of the said several Court districts, and the names of the cities, towns, and places where the Courts shall be severally holden therein, are as follows; the first column containing the names of the court towns (except in the said Metropolitan Districts), and in the said Metropolitan Districts the names given to the said Courts respectively; and the second column containing in every case the description of the districts for which the Courts are to be holden therein; that is to say,—[*The list will appear in the Appendix.*]

It will be observed, on reference to these Orders in Council, which we have reprinted because some important questions turn upon them, that the Courts named in schedules (A.) and (B.) are ordered to be abolished on the *thirteenth* of March, and the Act establishing the new Courts is not ordered to be put in force until the *fifteenth* day of March, leaving an interval of two days between the abolition of the old Courts and the formation of the new ones. Some questions have arisen upon this, as affecting the right to sue in the Superior Courts, and as to the appointments of some of the officers. The latter will be noticed in the chapter relating to the officers. The former will be considered presently.

5. *Suits pending in the Courts abolished.*—It was necessary to make provision for suits pending in the Courts thus abolished. For that purpose it was enacted by

Section 4.

Preserving the jurisdiction of County Courts.

Sect. 4. That for all purposes, except those which shall be within the jurisdiction of the Courts holden under this Act, the County Courts shall be holden as if this Act had not been passed; and all proceedings commenced in the County Court of any county before the time when any Court shall be holden under this Act in such county may be continued, executed, and enforced against all persons liable thereunto, in the same manner as if they had been commenced under the authority of this Act.

Proceedings pending in the County Courts.

It is singular that no question has yet arisen upon the construction of this section, the meaning of which it is very difficult to ascertain. What is to be done with suits that were pending in the County Courts at the time when the new Courts commenced their sittings? This section says that they "may be continued, executed, and enforced against all persons

Proceedings pending in the County Courts.

liable thereunto, *in the same manner* as if they had been commenced under the authority of this Act." Does this mean that they may be "continued, &c." in the Court in which they were commenced, and according to *its* forms; or that they may be continued in the new Court, according to the forms and with the powers of the new Court? Or are the words "in the same manner" to be used as meaning that such suits may be continued in the old Courts, "*as if*" they had been commenced under the authority of the new Act?

Nor is the difficulty merely a speculative one. It is likely to occur in practice. Suppose a plaintiff to have joined issue in a suit in the old County Court, and that in the interval before trial the new Court had been established. What is he to do? Can he try in the old Court, and issue execution thence? If not, but he is to resort to the new Court, how is it to deal with the pleadings, how try, how issue execution? Above all, how are the costs to be taxed—by what scale, or under what authority? Is the attorney to be entitled to his regular fees in the old Courts, or only to the restricted fees in the new one; and, if the latter, are the costs of the previous proceedings to fall upon the client?

To us the construction appears to be, that pending suits are to be continued *in the new Courts* "in the same manner as if they had been commenced under the authority of this Act;" that is to say, *according to the forms* of the new Courts. But how a case in which, for instance, there has been a declaration, a plea, and a *venire*, to a jury of twelve, is to be *continued* (*i. e.* from the point at which it stood in the old Court) in a Court which has no pleadings, and a jury of five only, and without the formality of a fresh plaint, is a difficulty of which we cannot suggest the solution. Perhaps the most prudent course will be to evade it, *by issuing a new plaint*, and taking the proceedings afresh in the new Court. But this may not always be practicable; for, in the first place, the pending suit may be necessary to exclude the Statute of Limitations; and, secondly, it may be a serious question whether, by a fresh plaint, the plaintiff does not expose himself to a nonsuit in the pending action; and, certainly, he could not in the second suit recover the costs of the first.

BOOK I. THE COURTS. — Section 6.

6. *Repeal of Jurisdiction of the Local Courts described in the Schedules.*—Section 6 repeals all Acts of Parliament that gave jurisdiction to the Local Courts established by statute, and set forth in the foregoing schedules, and especially so much of the 8 & 9 Vict. c. 127 (*the Small Debts Act*) as gave jurisdiction to Commissioners of Bankrupts, and to other Courts over judgments obtained therein. It runs thus:

Section 6. — When a Court shall be established under this Act, recited Acts and all other Acts affecting its jurisdiction, repealed.

Sect. 6. And be it enacted, that as soon as a Court shall have been established in any district under this Act, and also at the time mentioned in any such order which shall have been made as aforesaid for holding any of the Courts mentioned in either of the said schedules as a County Court under this Act, the several provisions and enactments of the said Acts of Parliament of the eighth and of the ninth year of the reign of Her Majesty, and of every other Act of Parliament heretofore passed, so far as the same respectively relate to or affect the jurisdiction and practice of the Court so established or ordered to be holden as a County Court, or give jurisdiction to any Court, or to any Commissioner of the Court of Bankruptcy, with respect to judgments or orders obtained in the Court so established or ordered to be holden as a County Court, shall be repealed.

Small Debts Act, 8 & 9 Vict. c. 127, repealed as affects the County Courts.

7. *Repeal of the Small Debts Act, as it affects the County Courts.*—It is necessary to explain that, by the statute alluded to (viz. 8 & 9 Vict. c. 127), power is given to the Commissioners of Bankrupts, and to the judges of any Court of Record within whose jurisdiction a defendant may be residing, against whom a judgment has been obtained in any Court for a sum not exceeding 20*l.* and which is unsatisfied, to summon the said defendant before him, and examine him touching his estate and effects, and to order payment by instalment or otherwise, and to commit for forty days for disobedience to such order. The effect of this section is, therefore, to repeal the jurisdiction thereby given to other Courts over any judgment obtained in the County Courts.

The *Small Debts Act* is consequently not now applicable to any judgment obtained in the County Courts. But precisely similar powers are by a subsequent section given to the County Courts in respect of their own judgments.

8. *As to proceedings pending in the Local Courts named in the Schedules.*—As section 4 provides for the continuance of suits already commenced in the County Courts, so does section 7 provide for the continuance of proceedings already commenced in any of the Local Courts named in the schedules. The language of the two sections is almost the same, and the same difficulties as have been already described in commenting upon the section relating to the County Courts arise also in the construction of this section, and therefore it is unnecessary to repeat them. The section is as follows:

Proceedings pending in the Courts in schedules (A.) and (B.)

Sect. 7. Provided always, and be it enacted, that all proceedings in execution of the said Acts or any of them, commenced before the passing of this Act, or before the days severally appointed for the alteration of the constitution of the said Courts, shall be as valid to all intents and purposes as if this Act had not been passed, or as if the said Courts had not been altered, and may be continued, executed, and enforced against all persons liable thereto in the same manner as if they had been commenced under the authority of this Act.

Section 7.

Proceedings under former Acts to be valid.

9. *Cases as to establishment of the Courts.*—Upon sections 4, 5, and 6, some questions have arisen which, having been brought before the Superior Courts, were there decided.

In the first case, that of *Sansom* v. *Price* (1 Cox & Macrae, 40), an action had, on November 16, 1846, been brought in the Court of Exchequer, for a debt within the jurisdiction of the Middlesex Court of Requests. It was tried on the 14th of October, 1847, and the defendant applied to enter a suggestion to deprive the plaintiff of costs. It was contended by *Lush*, for the defendant, that the effect of sections 5, 6, and 7, of the County Courts Act was to repeal all former Acts, so far as they relate "to the establishment, or jurisdiction, or practice of" the Courts named in the schedules, of which the Middlesex Court of Requests was one; that being so repealed it was as if they had never existed, and certainly the Middlesex Court was not in existence at the time of the trial of the action. But the Court held that the *Requests Act*, under which the Court of Requests was established, was still in existence for the purpose sought. It was only

Sansom v. *Price* (1 Cox & Macrae, 40).

BOOK I. THE COURTS.

repealed in a qualified way by the County Courts Act.

Parker v. *Crouch* (1 Cox & Macrae, 42).

In the next case, that of *Parker* v. *Crouch* (1 Cox & Macrae, 42), the question raised was as to the precise period at which the County Courts were to be taken to have been formed, so as to bring a party suing in the Superior Court, in an action which might have been tried in the County Court, within the provisions of the 129th section, which deprives the plaintiff of the costs in any action "for which a plaint might have been entered under this Act." It appeared from the affidavits, that, although the Order in Council directed the new Courts to be established on the 15th of March, the County Court in question was not in fact formed for some weeks afterwards. The writ had been issued on the 25th of March, being after the time appointed by the Order in Council, but before the day when the Court was actually formed. And PLATT, B. held, that inasmuch as there was in fact no County Court in existence at which the plaintiff might have entered a plaint "*under* this Act," he did not come within the provisions of the 129th section, and the rule was accordingly discharged.

Harris v. *Lawrence* (1 Cox & Macrae, 43).

The same point arose and was decided in the same manner in the same Court (the Exchequer), in the case of *Harris* v. *Lawrence* (1 Cox & Macrae, 43). As the question was very well argued in this case, it may be desirable to give it entire.

Charnock, for defendant, had obtained a rule requiring plaintiff to show cause "why on payment of 5*l.*, the amount of the verdict recovered in this case, all further preceedings should not be stayed; *or* why the judgment should not be entered up for the said sum of 5*l.* only, without costs; *or* why the plaintiff should not bring the *postea* into Court and file the plea roll, so that the defendant might enter a suggestion thereon to deprive the plaintiff of costs, pursuant to the statute 9 & 10 Vict. c. 95, s. 129, for the more easy recovery of small debts and demands in England." The action had been brought for a sum of 44*l.* for not repairing a house; and only 5*l.* had been recovered. It had been commenced after the passing of the statute 9 & 10 Vict. c. 95, but before the County Court had been established by the Order in Council. The house was situate and both plaintiff and defendant dwelt within the district of the County Court of Middlesex.

Crowder, Q. C., now showed cause.—This application is founded upon the language of the 129th section of the County Courts Act, "if any action shall be commenced after the passing of this Act in any of Her Majesty's Superior Courts of Record, for any cause other than those lastly herein-before specified" (alluding to certain actions in which a concurrent jurisdiction is given with the Superior Courts), "for which a plaint might have been entered in any Court holden under this Act, and a verdict shall be found for the plaintiff for a sum less than 20*l.*, if the said action is founded on contract, or less than 5*l.* if it be founded on tort, the said plaintiff shall have judgment to recover such sum only, and no costs; and if a verdict shall not be found for the plaintiff, the defendant shall be entitled to his costs as between attorney and client, unless in either case the judge who shall try the cause shall certify on the back of the record that the action was fit to be brought in such Superior Court." The language of the first part of the section must be read in connection with the after part, which qualifies the expression "*after the passing of this Act*," by the words "for which a plaint *might have been entered*." Inasmuch as there was no County Court existing, this was not an action for which a plaint might have been entered.

Harris v. *Lawrence* (1 Cox & Macrae, 43).

Charnock, in support of the rule.—It is impossible for words to express more clearly the intent. The plaintiff is to be deprived of costs in an action brought in the Superior Court if "commenced after the passing of this Act," if within the jurisdiction of the County Court. Acts of Parliament take effect from the day of the royal assent given, unless otherwise expressed. (33 Geo. 3, c. 13.) There was no necessity for bringing this action. The plaintiff might have waited.

By the COURT.—There can be no doubt as to the proper construction of the 129th section. The words "after the passing of this Act," are qualified by the subsequent words "for which a plaint might have been entered in any Court holden under this Act." When this action was commenced there was not in existence "a Court holden under this Act" in which a plaint might have been entered.—*Rule discharged with costs.*

10. *Where the Courts are to be held.*—The places at which the Courts are to be held are appointed by section 2, already cited, which empowers the Privy

BOOK I. THE COURTS.

Where to be holden.

Council to divide counties into districts, &c. "and to order that the County Court shall be holden for the recovery of debts and demands under this Act in each of such districts," and to alter such districts, &c. and "to alter the place of holding any such Court, or to order that the holding of any such Court be discontinued, or to consolidate any two or more of such districts, and from time to time, with the advice aforesaid, to declare by what name, and in what towns and places, the County Courts shall be holden in each district." By section 8 the Privy Council are empowered to order the Local Courts named in schedules (A.) and (B.) to be held as County Courts, and to alter the place for holding any such Court. And section 56 directs the times for their being holden.

11. *Court-houses to be provided.*—Then, for the purpose of supplying the Court with the necessary conveniences for the conducting of its business, a series of sections provide for the hire, erection, and fitting-up of court-houses, offices for the clerks, and prisons. To this end, powers are given for the purchase of land, for the borrowing of money upon the credit of the fee-fund, and the raising of a fee-fund. The property of the Courts is vested in the treasurer, but the clerks are to have the care of them, and to appoint and dismiss the servants requisite to keep them in order. These sections, though long, are a necessary portion of this treatise, and as no question has yet been raised upon them, we give them without commentary.

Section 48.

Treasurers, with approval of Secretary of State, to provide court-houses, offices, &c.

Sect. 48. And be it enacted, that the treasurer of any Court holden under this Act for which a court-house and offices, with necessary appurtenances, shall not have been already provided, or where such court-house and offices are inconvenient or insufficient, shall, as soon as conveniently may be, with the approval of one of Her Majesty's principal Secretaries of State, build, purchase, hire, or otherwise provide messuages and lands, with all necessary appurtenances, fit for holding the Court therein, and for the offices necessary for carrying on the business of the said Court, or, instead of providing separate buildings, may, with the like approval, contract with any person, being the owner of or having the control and management of any county or town hall or

other building, for the use and occupation thereof, or of so much thereof as may be needed for the purposes of this Act, and subject to such annual rent, and to such conditions as to the repairs, alterations, or improvements of such hall or building, as may be agreed upon; and all lands, messuages, and other real and personal estates and effects belonging to the Court shall vest in the treasurer for the time being, and in his successors in that office, in trust for the purposes of this Act.

Provision and care of Court-houses, &c.

Section 49.

Where common gaols are inconvenient, prisons belonging to Courts under Acts cited in schedules (A.) and (B.) may be used.

Sect. 49. And be it enacted, that it shall be lawful for any Court holden under this Act, with the approval of one of Her Majesty's principal Secretaries of State, to use as a prison for the purposes of this Act any prison now belonging to any Court holden under any of the Acts cited in the said schedules (A.) and (B.), in all cases where it shall appear to the said Secretary of State that the common gaol or house of correction of the county, district, or place in which the Court is established is inconveniently situated, or is not applicable for the use of the said Courts; and whenever any such prison shall be so allowed to be used it shall be deemed one of the common gaols of the county for which it shall be used, as if it had been provided, after presentment of the insufficiency of one common gaol for such county, under the provisions of an Act passed in the sixth year of the reign of Her Majesty, intituled "An Act to amend the Laws concerning Prisons," or where such prison shall be situated within a borough having a separate Court of Sessions of the Peace, it shall be deemed a house of correction for such borough.

5 & 6 Vict. c. 98.

Section 50.

Power for purchasing land.

Sect. 50. And be it declared and enacted, that the provisions of the Lands Clauses Consolidation Act, 1845, shall apply to the purchase of lands by the treasurer of any such Court for the purposes of this Act, except so much thereof as relates to the purchase and taking of lands otherwise than by agreement; and in construing the said Act the treasurer acting with the approval of one of Her Majesty's principal Secretaries of State shall be deemed the promoter of the undertaking for which such lands are required.

Section 51.

Treasurer empowered to borrow money for the purpose of this Act.

Sect. 51. And be it enacted, that for the purpose of defraying the expenses of building, purchasing, or providing any messuages and lands for the purposes aforesaid, it shall be lawful for the said treasurer to borrow and take up at interest so much money as he shall find to be necessary, the amount thereof, and the rate of

BOOK I. THE COURTS.

Provision and care of Court-houses, &c.

interest in each case, being first allowed by the said Commissioners of Her Majesty's Treasury; and the treasurer may enter into and execute such securities as may be required, and the securities so entered into shall be binding on him and his successors in the office of treasurer for securing repayment of the moneys borrowed, with interest for the same, out of the general fund hereinafter mentioned, and shall enter in a book belonging to the Court, to be kept by him for that purpose, the names of the several persons by whom any money shall be advanced for the purpose aforesaid, in the order in which the same shall be advanced, and the moneys so borrowed shall be paid off in the same order.

Section 52.

A general fund to be raised for paying off money borrowed.

Sect. 52. And be it enacted, that for raising a fund for providing a court-house and offices, and for paying off any moneys which may be borrowed as aforesaid, and the interest due in respect thereof, the clerk of every Court holden under the authority of this Act, in which and while it shall be necessary to raise such fund, shall demand and receive from the plaintiff in any suit brought in that Court the sum of sixpence when the debt or damage claimed shall exceed twenty shillings and shall not exceed forty shillings, and for every claim exceeding forty shillings one twentieth part thereof, neglecting any sum less than sixpence in estimating such twentieth part, or such other sum in either case, not exceeding the rates herein-before mentioned, as one of Her Majesty's principal Secretaries of State, with the consent of the Commissioners of Her Majesty's Treasury, from time to time shall order, which sum, if not paid in the first instance by the plaintiff upon suit brought in the Court, may be deducted from the sum recovered for the plaintiff, and shall be considered as costs in the cause; and the clerk of the Court shall keep an account of all moneys so paid to him, and shall pay over the amount from time to time to the treasurer of the Court, and the amount thereof shall accumulate, to form a fund to be called "The General Fund of the County Court of at ," and shall be applied in the first place toward paying the interest of the several sums so borrowed, and in the second place toward paying the rent and other expenses necessarily incurred in holding the Court, and in the third place toward paying off the several principal sums borrowed, in the order in which they

were borrowed, and in the fourth place toward defraying the other expenses herein charged on the said general fund, in such manner as the judge, with the approval of one of Her Majesty's principal Secretaries of State, shall direct; and the surplus which shall from time to time accumulate, after providing for all the said expenses, shall be paid over to the credit of the consolidated fund of the United Kingdom of Great Britain and Ireland; subject, nevertheless, to any charge which may arise from any future deficiency of the same fund.

Provision and care of Court-houses, &c.

Sect. 53. And be it enacted, that, as soon as a Court shall have been established in any district under this Act, all messuages, lands, and tenements, and all real estates and effects, vested in or belonging to the commissioners, clerks, treasurers, trustees, or other officers of any of the Courts mentioned in the said schedules (A.) and (B.), which were holden in trust for the purposes of such Court shall vest in or belong to the treasurer of the County Court for the time being, and his successors in the said office, in trust for the purposes of this Act, for the like estate and interest, and subject to all the covenants, conditions, and agreements on which the same were respectively holden; and the said commissioners, clerks, treasurers, trustees, and other officers, their heirs, executors, and administrators, shall be freed and discharged from all such covenants, conditions, and agreements, and from the consequences of their being unable to fulfil any covenants or agreements into which any of them may have lawfully entered in execution of the provisions of any of the said Acts, on or before the repeal of such Act, with respect to their estate or interest in such messuages, lands, tenements, real and personal estates and effects, in consequence of the vesting thereof in the said treasurer; and all moneys and securities for money, and other property and effects of any kind whatsoever, in the hands of the commissioners, clerks, treasurers, trustees, or other officers of any such Court, shall be paid, transferred, and delivered to the said treasurer, or to such person as he shall appoint to receive the same, and shall be applied in discharging all claims and demands to which the same were liable in the hands of such commissioners, clerks, treasurers, trustees, or other officers, and the residue thereof shall be applied to the same purposes to which the general fund is applicable.

Section 53.

Property of Courts in schedules (A.) and (B.) to vest in the treasurer of the County Court.

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Provision and care of Court-houses, &c.

Section 54. Provisions for outstanding liabilities.

Sect. 54. And be it enacted, that it shall be lawful for the treasurer of the County Court, with the approval of the Commissioners of Her Majesty's Treasury, and upon the certificate of the expediency thereof under the hand of the judge, to sell and dispose of all messuages, lands, and tenements which may be vested in him under the provisions of this Act which shall not be needed for the purposes of this Act, or which the treasurers shall think ought to be sold, for the purpose of better enabling him to discharge any just debts on account of any Court of which the constitution shall be altered under this Act, or to provide other and more convenient buildings for holding a County Court; and the proceeds of all such sales, and also all moneys and securities for money which shall be paid, transferred, or delivered to him on account of any such Court as aforesaid, shall be applied towards discharging such debts; and in every case in which at the time of the alteration of the constitution of the Court there shall be any just debts owing on account of any such Court, or any salaries or annuities legally or equitably chargeable upon or payable out of the fees of such Court, or out of any fund to which such fees are payable, over and above what may be discharged by the moneys and effects so paid, transferred, or delivered to the treasurer on account of such Court, and over and above the proceeds of the sale of any such messuages, lands, and tenements, in case the same or any part thereof shall be sold, such debts, salaries, and annuities shall be treated as if they were debts which had been incurred for the purpose of providing a court-house for holding the County Court for the district in which the place is included where such Court was holden, and shall be liquidated out of the general fund herein-before mentioned, if the same shall be sufficient for that purpose, and any deficiency therein shall be paid out of the consolidated fund of the United Kingdom of Great Britain and Ireland.

Section 55. Clerks to have the charge of the court-houses, &c. and to appoint and dismiss servants, &c.

Sect. 55. And be it enacted, that the clerk of every Court shall have the care of the court-house and offices of the Court, and shall appoint and have power to dismiss the necessary servants for taking charge of such court-house and offices, at such salaries as shall be from time to time authorized by the judge, with the consent of the Commissioners of Her Majesty's Treasury; and the clerk of the Court, under the direction of the said commissioners, and subject to such regulations as they may require to be

enforced, shall make all necessary contracts or otherwise provide for repairing and furnishing, and for cleaning, lighting, and warming, the said court-house and offices, and for supplying the said court and offices with law and office-books and stationery, and for defraying all other necessary expenses not otherwise provided for incident to the holding of the said Court, and the charge of the court-house and offices, and expenses thereby incurred, shall be paid out of the general fund of the Court: provided always, that the treasurer or clerk of any Court, or the partner of any such treasurer or clerk, or any person in the service or employment of any such treasurer or clerk, shall not be directly or indirectly concerned or interested in any such contract, or in supplying any articles for the use of the said courts and offices: provided also, that no payment for any such charge shall be allowed in the clerk's accounts until allowed under the hand of the Judge.

Provision and care of Court-houses, &c.

Section 55.

12. *When to be held.*—The times for holding the County Courts are thus provided for by the 56th section of the statute:

Sect. 56. And be it enacted, that the Judge of each district shall attend and hold the County Court at each place where Her Majesty shall have ordered that the County Court shall be holden within his district at such times as he shall appoint for that purpose, so that a Court shall be holden in every such place once at least in every calendar month, or such other interval as one of Her Majesty's principal Secretaries of State shall in each case order; and notice of the days on which the Court will be holden shall be put up in some conspicuous place in the court-house and in the office of the clerk of the Court, and no other notice thereof shall be needed; and whenever any day so appointed for holding the Court shall be altered, notice of such intended alteration, and of the time when it will take effect, shall be put up in some conspicuous place in the court-house and in the clerk's office.

Section 56.

Judge to hold the Court where Her Majesty shall direct.

Notices for holding Courts to be put up in a conspicuous place.

It appears, therefore, that a Court must be holden for each district once at least in every calendar month.

13. *Notice to be given.*—Notice of the days of holding is to be posted on some conspicuous place in the court-house and in the office of the clerk of the Court.

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Notices of the Courts.

If the day appointed for holding any Court be altered, notice of such alteration is to be posted in like manner.

No other notice is to be *necessary*—that is, to the legality of the Court; but the Treasury has sanctioned the cost of advertising the Courts in the local newspapers, and it appears from a correspondence with Mr. FILLITER (see 1 C. C. Chron. p. 68) that it will not object to the expense of publishing the notices of the Courts in the COUNTY COURTS CHRONICLE also, as a central medium to which persons at a distance, having business in the Courts, especially the members of the profession, to whom the notices required by the statute are not accessible, may be enabled to refer.

It is a question whether due notice of the holding of a Court be essential to its legal constitution. A Court of Common Law is illegally held on any other day than that directed by the statute, patent, or prescription by which it is constituted or regulated, and all its acts done at such an irregular sitting are void. (6 Vin. Abr. 498.) By analogy, therefore, we are inclined to consider that a County Court held without strict observance of all the requisitions of the statute would be illegal and void; although Mr. MOSELEY, in his treatise (p. 17), thinks otherwise, and is of opinion that the provisions of this statute are directory merely, and not a condition for the due holding of the Court. Care, however, should be taken by the officers that the question shall not arise, by strict attention to the regular posting of the notices.

And upon this some difficulties present themselves. The statute does not state how many days' notice is to be given. But this omission will not sanction any brevity of notice. In the absence of a specified period, a *reasonable* notice will be required; and the word *reasonable* has no definite interpretation in respect of time: it is construed according to the circumstances of the particular case, the objects of the notice, and the persons to whom it is addressed. In the present case, the longest practicable notice should be given. Probably less than a week would not be deemed *reasonable*. The Judge would act prudently, perhaps, to appoint his Courts a month in advance, and the Clerk should post the notice immediately on the appointment.

And this would appear to have been the intention of the Legislature; for it is remarkable that the notice is to be put up, not *on* the court, but *in* it. Now, inasmuch as a court-house would be closed at all other times than when the Court is actually sitting, the posting of the notice *in* the court is a practical absurdity, unless it was intended that the succeeding Court should be appointed and notice of it put up at least as far back as the morning of the court-day next before the Court so announced. We direct attention to this remarkable language of the statute, because many clerks, hastily reading the section, have mistaken the word *in* for *on*, and, following the usual practice, have posted the notice on the door or outside wall of the court. Probably, looking to the purpose of the notice, it would be the better course to post it both within and without:—within, to comply with the words, and without, to accomplish the object, of the statute.

Notices of the Courts.

The form of notice usually adopted is the following:

Form of notice of Court.

County Court of

Notice is hereby given, that in pursuance of the statute 10 Vict. c. 95, intituled "An Act for the more easy Recovery of Small Debts and Demands in England:" esquire, the Judge appointed for the County Court of at will hold a Court for the transaction of business on the day of at the hour of in the forenoon, at the court-house in the said county of and within the district of the said Court.

Dated this day of in the year one thousand eight hundred and forty-

Clerk of the said Court.

The third section enacts, "that the County Courts may be holden simultaneously in all or any of such districts;" *i. e.* the districts appointed by the Privy Council.

14. *The Style of the Courts.*—This is provided for by section 2, which enacts, that "it shall be lawful for the Queen, by the advice of her Privy Council, to declare by what name, and in what towns and places the County Court shall be holden in each district."

A style or title and seal belongs by the common law to every Court, and that style must be used in, and that seal affixed to, every act of such Court; and process

Book I. THE COURTS.

Style of the Courts.

issued under the wrong style is void, and the officer executing it a trespasser. (*Garratt* v. *Morley*, 1 Gale & D. 275.)

15. *The Seal of the Court.*—Every County Court is to have a seal, and with it all processes issuing out of the Court are to be sealed or stamped. This is provided by the 57th section, which also makes the forgery of such seal a felony. It is as follows:

Section 57.

Process of the Court to be under seal.

Sect. 57. And be it enacted, that for every Court holden under this Act there shall be made a seal of the Court, and all summonses and other process issuing out of the said Court shall be sealed or stamped with the seal of the Court; and every person who shall forge the seal or any process of the Court, or who shall serve or enforce any such forged process, knowing the same to be forged, or deliver or cause to be delivered to any person any paper falsely purporting to be a copy of any summons or other process of the said Court, knowing the same to be false, or who shall act or profess to act under any false colour or pretence of the process of the said Court, shall be guilty of felony.

16. *Lords of Manors may surrender Courts.*—Numerous Courts exist throughout the kingdom by virtue of ancient franchises and manorial rights. The County Courts Act has not abolished these, nor does it make any compulsory interference with their jurisdiction or privileges. All such Courts, therefore, still exist, and are unaffected by the provisions of the new statute. The only Courts superseded are the County Courts and the Courts of Request established by statute and specifically named in schedules (A.) and (B.) But there is a provision *empowering* lords of manors, honors, hundreds, or liberties, to surrender their right of holding any Court for the recovery of debts or demands, with the consent of the steward or of any person having a freehold office in such Court, or on the next vacancy in such freehold office. This is enacted by

Section 14.

Lords of Manors, &c., may surrender Courts, with consent of persons interested.

Sect. 14. And be it enacted, that it shall be lawful for the lord of any hundred, or of any honor, manor, or liberty, having any Court in right thereof in which debts or demands may be recovered, to surrender to Her Majesty the right of holding such Court (for any such purpose, with the consent of any steward

Manor Courts.
Section 14.

or other officer, if any, having a freehold office in such Court,) or upon the next vacancy in any such freehold office; and from and after such surrender such Court shall be discontinued, and the right of holding such Court shall cease, and all proceedings commenced in such Court may thereafter be continued, and shall be enforced and executed, as if they had been commenced under the authority of this Act in a County Court holden for the district in which the cause of action arose; but no person shall be entitled to claim any compensation under this Act by reason of any such surrender: provided always, that the surrender of the right of holding any such Court for the recovery of debts and demands shall not be deemed to infer the surrender or loss of any other franchise incident to the lordship of such hundred, honor, manor, or liberty, and that the Court thereof may be holden for all other purposes, if any, incident thereunto, as now by law it may.

BOOK II.

THE OFFICERS.

Book II. THE OFFICERS.

Four Officers are recognized by the Statute:

I. The Judge.
II. The Treasurer.
III. The Clerk.
IV. The High Bailiff.

Of these in their order.

Cap. I.—THE JUDGE.

1. *The Judge.*

17. The sections providing for the appointment of the Judges are, the 9th, 10th, 11th, 12th, and 13th. They are as follow:

Section 9.

Appointment and qualification of Judges.

Sect. 9. *And be it enacted, that the Lord Chancellor shall appoint as many fit persons as are needed to be Judges of the County* Court under this Act, each of whom shall be a barrister-at-law who shall be of seven years standing, or who shall have practised as a barrister and special pleader for at least seven years, or a barrister or attorney-at-law who, under the provisions of any of the Acts cited in the said schedules (A.) and (B.), or under the provisions of either of the said Acts of the eighth year and of the ninth year of the reign of Her Majesty, shall have been nominated or appointed to preside in or hold any Court constituted or held under any of the Acts cited in either of the said schedules (A.) and (B.), whether by the title of Judge or barrister, or county clerk, assessor, or steward, or deputy steward, or by any other title or style whatsoever, or a person filling the office of Judge of the County Court, or County Clerk, in the same county, at the time of the passing of this Act: provided always, that every attorney-at-law who shall be appointed a Judge of the County Court under this Act, and who shall be the partner of any other attorney-at-law, shall, within twelve calendar months next after entering on the said office of Judge of the County Court, dissolve such partnership

Proviso as to attorneys acting as Judges under Acts cited in schedules (A.) and (B.)

Book II. THE OFFICERS. — 1. *The Judge.*

or vacate the said office of Judge, and shall not during his continuance as such Judge enter into any new partnership; and that no attorney-at-law who shall be appointed a Judge of any County Court under this Act shall be, either by himself or his partner, employed or act as town clerk, or clerk of the peace of any county, city, or borough, or as clerk to any bench of justices, or as clerk or secretary to any board of guardians or governors or directors of the poor, or of any vestry or local or parochial board of trustees or commissioners, or of any public company or corporation whatsoever, or directly or indirectly concerned as attorney or agent for any party in any Court regulated by this Act, or, after the expiration of the said term of twelve calendar months, in any other Court of Law or Equity.

Section 10. — Judges at present acting in the Courts of Bath, Bristol, Liverpool, and Manchester entitled to the first appointment under this Act for those places.

Sect. 10. And whereas, under the provisions of the several Acts cited in the schedule marked (A.), annexed to this Act, barristers have been appointed and now act as salaried commissioner or as assessor or assistant to the commissioners appointed to hold the several Courts of Request constituted or regulated by the said several Acts in the cities of Bath and *Bristol and in the boroughs of Liverpool and Manchester; be it enacted, that when any order shall be made for holding a* Court under this Act within the said cities and boroughs respectively, districts shall be constituted which shall comprise at least the whole of the said cities and boroughs respectively, and every such barrister who shall have been on the first day of June in this year the salaried commissioner or assessor or assistant to the commissioners appointed to hold the said several Courts of Request, and who shall continue to hold the same office at the time when such order as last aforesaid shall be made respecting their city or borough respectively, shall be entitled to be appointed the first Judge under this Act of the Court to be holden in and for the said cities and boroughs respectively.

Section 11. — Stewards of the manors of Sheffield and Ecclesall appointed under 48 Geo. 3, c. 103, to be the first

Sect. 11. And whereas an Act was passed in the forty-eighth year of the reign of King George the Third, intituled "An Act for regulating the Proceedings in the Courts Baron of the Manors of Sheffield and Ecclesall in the County of York," under the provisions of which Act John Parker Esquire has been appointed and is steward of the manor of Sheffield, and Daniel Maude Esquire has been appointed and is steward of the

BOOK II. THE OFFICERS. — 1. *The Judge.* — Judges under this Act for those districts.

manor of Ecclesall; be it enacted, that if the said John Parker shall continue steward of the manor of Sheffield when any order shall be made for holding a Court under this Act within the liberty of Hallamshire, a district shall be constituted which shall comprise at least the whole liberty of Hallamshire, except the hamlet or bierlow of Ecclesall, and if the said Daniel Maude shall continue steward of the manor of Ecclesall when any order shall be made for holding a Court under this Act in the manor of Ecclesall, another district shall be constituted under the provisions of this Act, which shall comprise at least the whole hamlet or bierlow of Ecclesall; and in such cases respectively the said John Parker shall be entitled to be appointed the first Judge under this Act of the Court to be holden in the district comprising the liberty of Hallamshire, except the bierlow of Ecclesall, and the said Daniel Maude shall be entitled to be appointed the first Judge under this Act of the Court to be holden in the district comprising the bierlow of Ecclesall, and the districts of the said two Courts shall not be reduced within the said limits respectively, so long as the said John Parker and Daniel Maude respectively shall continue Judges of the said Courts; and the present deputy stewards of the said two Courts Baron shall be entitled to be appointed the first Clerks of the said two Courts respectively, or in case of the consolidation of the said two Courts, to act jointly as Clerks of the consolidated Court, under such regulations as to the division of duties and emoluments of the office as shall be made by order of Court, with reference to the duties and emoluments of their offices in the said two Courts, before such consolidation, in case of difference between them; and the said John Parker and Daniel Maude shall have the same privilege of holding the said Courts by deputy which they now have of holding the said Courts Baron by deputy, provided only that the appointment of every such deputy shall be subject to the approval of one of Her Majesty's principal Secretaries of State; and the said John Parker and Daniel Maude shall hold the said Courts in all other respects according to the provisions of this Act.

Section 12. — The present County Clerk of Middlesex, appointed

Sect. 12. And whereas the County Court of Middlesex is regulated under the provisions of an Act passed in the twenty-third year of the reign of King George the Second, intituled "An Act for preventing Delays and Expenses in the Proceedings in the

County Court of Middlesex, and for the more easy and speedy Recovery of Small Debts in the said County Court," under which the County Clerk is empowered to appoint a deputy to act for him in his said office of County Clerk: and whereas the said county of Middlesex within the jurisdiction of the said Court is so populous that it will be expedient that several districts should be constituted therein under this Act; be it enacted, that if the present County Clerk of Middlesex shall continue County Clerk of Middlesex when any order shall be made for holding a Court under this Act within the jurisdiction of the said Court, he shall be entitled to be appointed the first Judge under this Act of such of the said districts as he shall select, and shall hold the said Court in all respects according to the provisions of this Act, except that he shall be removable from the said office of Judge only in the same manner as he is now by law removable from the office of County Clerk, and that he shall have power to hold the Court by his present deputy, and on vacancy of the office of deputy to appoint a deputy to hold the said Court for him, provided such deputy be a barrister of not less than three years' standing, and shall be approved by one of Her Majesty's principal Secretaries of State; and the present Registrar of the said County Court shall be entitled to be the first Clerk of the Court holden in the district so selected by the County Clerk; and all suits and proceedings commenced in the County Court of Middlesex before the division of the said county into districts shall be continued, and may be executed and enforced, as if they had commenced under this Act before the said County Clerk in the district so selected by him.

Clerk under 23 Geo. 2, c. 33, to be the first Judge under this Act, and may continue to appoint a deputy, subject to approval of Secretary of State.

Present registrar to be the first Clerk.

Sect. 13. And be it enacted, that whenever any order shall be made for holding a Court under this Act within the several towns mentioned in the first column of the schedule marked (C.) annexed to this Act, then, upon the next vacancy which shall happen after the passing of this Act in the several offices mentioned in the second column of the said schedule (C.) in conjunction with such Courts, the several Lords for the time being of the Manors and Liberties mentioned in the third column of the said schedule (C.) in conjunction with the said Courts shall be entitled to appoint persons, properly qualified according to the provisions of this Act, to fill the said offices respectively, subject nevertheless in each case to the approval of one of Her Majesty's principal Secretaries of State.

Section 13.

Provisions for certain Lords of Manors having rights of appointment under the Acts hereby repealed.

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1. *The Judge.*

Schedule (C.)

The following is

SCHEDULE (C.)

Town.	Officer of the Court.	Person to whom the next Appointment is to belong.
Ashton-under-Lyne	Clerk of the Court to be holden at Ashton.	Lord of the Manor of Ashton-under-Lyne.
Birmingham -	High Bailiff of the Court to be holden at Birmingham.	Lord of the Manor of Birmingham.
Cirencester -	Clerk of the Court to be holden at Cirencester.	Lord of the Manor and Seven Hundreds of Cirencester.
Kidderminster -	Clerk of the Court to be holden at Kidderminster.	Lord of the Manor of the borough of Kidderminster.
Stourbridge -	Clerk of the Court to be holden at Stourbridge.	Lord of the Manor of Old Swinford or Amblecoat, to whom, on the day before the passing of this Act, the next turn belongs to appoint the Clerk or Beadle of the Court of Requests for the Parish of Old Swinford.
St. Albans - -	High Bailiff of the Court to be holden at Watford.	Lord of the Hundred of Cashio.
Sheffield - -	Judge of the Court to be holden at Sheffield.	Lord of the Manor of Sheffield.
	Clerk of the Court to be holden at Sheffield.	Lord of the Manor of Ecclesall.
Stockport - -	Clerk of the Court to be holden at Stockport.	Lord of the Manor and Barony of Stockport.

18. *The Appointment.*—It will be seen from these provisions that the appointment of the Judges, with certain exceptions presently to be noticed, is vested in the Lord Chancellor.

Appointment of Judge.

The exceptions are, 1st, of certain districts specially named in the Act; and, 2ndly, of certain cases possibly to arise hereafter.

The exceptions specified are—

1. The then existing Judges of the Local Courts of Bath, Bristol, Liverpool, and Manchester.

2. The district of Sheffield, of which JOHN PARKER, Esq., the then steward, is to be the first Judge.

3. The district of Ecclesall, of which DANIEL MAUDE, Esq. the then steward, is to be the first Judge.

4. In the county of Middlesex, of any district of which, at his option, the then County Clerk is to be first Judge.

5. In the towns specified in schedule (C.), when any order shall be made for holding a County Court there, the Lords of the Manors and Liberties mentioned in the schedule are entitled to appoint to the next vacancy after the passing of the Act persons properly qualified according to its provisions, subject to the approval of one of the Secretaries of State.

The power of appointment thus vested in the Lord Chancellor is also limited to the selection of persons having certain qualifications defined by the statute. He appoints, therefore, subject to these conditions, and any appointment of an unqualified person would be void. These are—

19. *The Qualifications of a Judge.*—We place them in a tabular form for the sake of perspicuity.

Qualifications of Judge.

1. A barrister-at-law of seven years' standing.
2. A barrister-at-law who shall have practised as a barrister and special pleader, for at least seven years. (The meaning of this is, that he needs not to be a barrister of seven years' standing, if his practice as a special pleader and barrister have together extended over seven years.)
3. A barrister (even if of less than seven years' standing) who had not been appointed to preside in any of the Local Courts named in schedules (A.) and (B.) by whatever title.
4. An attorney holding the like office.

BOOK II. THE OFFICERS. — 1. *The Judge.*

5. Any person filling the office of Judge of the County Court, or County Clerk, in the same county, at the time of the passing of the Act.

Disqualifications of Judge.

20. *Disqualifications of a Judge.*—It is provided by section 9, that an attorney appointed a Judge of any County Court, and having a partner, shall, within twelve months after entering on his office, dissolve such partnership, or vacate the office of Judge, nor shall he, while holding such office, enter into any new partnership. Nor shall he, by himself or partner, be employed or act as town clerk, clerk of the peace of a county, city, or borough, clerk to any bench of justices, clerk or secretary to any board of guardians, or governors of the poor, or of any vestry, or local or parochial board of trustees, or commissioners, or of any public company or corporation whatsoever, or directly or indirectly be concerned as attorney or agent for any party in any Court regulated by this Act; or, after the expiration of twelve months from his entering upon his office, in any other Court of Law or Equity.

And with respect to barristers appointed to the office of Judge, it is provided by section 17 as follows:

Section 17.

Judges not to practice as barristers in their districts, except in certain cases.

Sect. 17. And be it enacted, that no Judge appointed under this Act shall during his continuance as such Judge practise as a barrister within the district for which his Court is holden under this Act, except those barristers already appointed to preside in or hold the said Courts in Bath, Bristol, Liverpool, Manchester, Sheffield, Ecclesall, and Middlesex, and now practising in chambers as conveyancing counsel, who may continue such practice.

Upon this section a very important practical question arises, namely, what constitutes "practice as a barrister within the district for which his Court is holden?"

The obvious purpose of this provision was to prevent the Judge from being subjected to temptation or suspicion through receiving briefs to-day from the attorneys upon whose arguments he will be called upon to pass judgment to-morrow.

If the restrictive language of the section be literally construed, it is plain that this intent of the Legislature

cannot be fulfilled. If to constitute "*practising*" in a district, it be held that some act must be *done within* the prescribed circle, the provision is a farce. In many cases the circuits of the Judges range over parts of several counties. The effect of the prohibition would, in such case, be nothing more than this:—In a county in which the assize-town happened to lie within one of his districts, he could not practise, although not one-tenth of the whole county might be within his jurisdiction. Of the next county nine-tenths might belong to his districts, but, because the assize-town chanced to be out of his districts, he might appear and practise there, although brought into immediate contact as a Barrister with the attorneys over whom he is continually presiding as Judge. The letter of the law is observed, but its spirit and intent are violated.

Judges not to practise as barristers within their districts.

Being a restrictive clause, it will of course be construed strictly *in favorem libertatis*, and against the restriction. But it might be fairly suggested whether "practising within the district" may not be read as "being concerned in any cause, proceeding, or business, arising in, or coming from, any district for which his Court is holden." It seems to us that a Barrister advising in London on a case from Yorkshire may not unreasonably be held to be practising in Yorkshire, especially where such an interpretation is necessary to accomplish an obvious purpose of the Legislature.

Appointment.

21. *Nature of the Appointment of Judge.*—The 9th section enacts that the "Lord Chancellor shall appoint as many fit persons as are needed to be Judges of the County Court under this Act." And the third section enacts that "there shall be a Judge for each district to be created under this Act." Upon this a question has arisen, whether a single appointment of one Judge to several Courts is valid. The Court of Queen's Bench held, in the case of *Reg.* v. *Parham* (1 Cox & Macrae), that it is, and the following is the judgment of the Court:—

LORD DENMAN, C. J., delivered the judgment of the court —On the demurrer to a plea in this case of *quo warranto*, a most important question arises as to the construction of the recent statute (9 & 10 Vict. c. 95), namely, whether the same person

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may be appointed a Judge of the County Court formed to be holden in several districts, or whether it is necessary that the appointment of each judge should limit his authority to one district only? The second section enables Her Majesty to divide the whole of any county into districts, and to order that a County Court shall be holden in each of such districts, and to make alterations from time to time, and to order that any part of one county shall be within the jurisdiction of the County Court of an adjoining county. The 3rd section enacts, that there shall be a judge for each district to be created under this act, and that the County Court may be holden simultaneously in all or any of such districts. The 9th section enacts that the Lord Chancellor shall appoint as many fit persons as are needed to be judges of the County Court under this act. These are the sections on which the question turns, for the true construction of which illustrations and arguments are drawn from many other sections of the same act. No doubt can be entertained that the jurisdiction of each Judge may, by his appointment, be limited to one district, and so there may be many Judges of the same County Court having no joint nor co-ordinate jurisdiction; and it was to meet such a case that the latter part of the 3rd section provided for holding the County Court simultaneously in all or any of the districts. That part of the section was necessary to meet the case of several judges being appointed to the same County Court; but it by no means involves the proposition that they must be so appointed, nor do the words "there shall be a Judge for each district" necessarily import any such proposition, but only that the Judge who shall so hold a County Court in each district shall be appointed to that district, so that there shall not be two or more Judges for the same County Court who may hold a Court in any given district. Then the 9th section, giving to the Lord Chancellor the appointment of as many fit persons as are needed to be Judges of the County Court, although it has no words specifically giving a discretion to the Lord Chancellor to determine how many are needed, yet seems much more consistent with the intended exercise of such a discretion than with the supposition that as many Judges must be needed as there are districts created by the crown. Now, if the Legislature had intended that the Lord Chancellor should have no discretion as to the

Reg. v. *Parham* (1 Cox & Macrae 3)

1. *The Judge.*

number of Judges to be appointed, but should be bound to appoint different persons to be Judges for the several districts, and to limit their jurisdiction accordingly, certainly some more restrictive language would have been used. There is nothing contrary to the general rules of law in the appointment of the same person to hold several offices which are distinct and independent of each other, and the duties of which are not inconsistent. And the offices of Judges of the County Courts can be so held in several districts, because in their case both these conditions are plainly satisfied. Such appointment, therefore, will be good, unless it is prohibited by the statute in question. There are no words in the statute directly prohibiting such appointment, nor can we, after a careful perusal of the different clauses, find any inconsistent with the validity of such appointment. It is true there are many provisions which appear to contemplate the jurisdiction being confined to one district; thus, the word "district" is used in the singular number throughout. But we must bear in mind that the jurisdiction *may* be so limited, and the provisions alluded to were necessary in the event of its being so limited. The question here is whether the jurisdiction *must* be so limited. The only section which appears to contain such a limit is the 12th, which gives the county clerk of Middlesex the right to select the district in that county for which he shall be entitled to be appointed Judge. That right, however, is in the nature of compensation, and stands on its own particular grounds. The appointment of the defendant, as set out in the plea, expressly names several districts in which he is to hold the County Court, and is not open to any objection on account of generality: it is as particular as if there had been several appointments, one for each district. It undoubtedly appoints the defendant to be Judge of the County Court of Hereford as well as of Worcester, but specifies the district of each court in which he is to hold the court, and it does not, as is contended in the argument, attempt to place any part of the one county within the jurisdiction of the County Court of the other, or to constitute any place in one to be part of a district in the other, which cannot be done by the Lord Chancellor, but only by her Majesty in Council. On the whole, therefore, we are of opinion that the appointment of the defendant is well

Reg. v. *Parham* (1 Cox & Macrae 263.)

made within the provisions of the statute in question, and our judgment is for the defendant in this case.

Judgment for the defendant.

Appointment of Judges to Courts in schedules (A.) and (B.)

22. *Appointment of Judges to the Local Courts converted into County Courts.*—By the 5th section the Queen in Council is empowered to order certain Courts of Requests named in schedules (A.) and (B.) to be holden as County Courts. The question has been started, rather as a point for discussion than as of practical importance (for the whole country has been parcelled into districts without occasion for a resolution of the doubt) whether the existing Judges of the Local Courts named in schedules (A.) and (B.) were entitled to continue in office, or whether the appointment vested in the Lord Chancellor by virtue of the general power in section 9, would extend to Courts for which the statute makes no special provision in respect of the Judges. The argument would run thus:—

In support of the power of the Lord Chancellor it might be contended that, in the absence of an express provision in the 5th section relating to those Courts, we must turn to the general power given to the Lord Chancellor, by the 9th section, to "appoint as many fit persons as are needed to be Judges of the County Court under this Act;" and there being express provision made for the continuance of the Judges of the Courts of Bath, Bristol, Liverpool, Manchester, Sheffield, &c., it may be concluded that, so far at least as the intention of the Legislature is concerned, it was not contemplated to reserve the rights of other Judges of Courts not expressly named. On the other hand it may be urged, that an office cannot be thus abolished by implication; that the Courts in question are not extinguished, only enlarged, and that the existing Judges are entitled to remain such, provided they possess the qualifications required by the County Courts Act. And it might be further contended that, if so qualified, the Courts over which they preside are not of the description to which the statute gives the Lord Chancellor a power to appoint, for section 9 directs that he shall "appoint as many fit persons as are needed to be Judges," and if the Judges be qualified according to the Act, no new Judge *is* needed.

But, as we have before observed, this is a purely

speculative point. It has not arisen in the distribution of the districts, and cannot arise hereafter, for only in the cases of the first Judges could the difficulty occur.

23. *How vacancies are to be supplied.*—The latitude of appointment allowed in certain cases of judgeships that supersede pre-existing judgeships of Local Courts is limited to the appointment of the first Judge. The next and future vacancies are to be filled only by

1. A barrister of seven years' standing.
2. A barrister who has practised for seven years as barrister and special pleader.
3. A barrister who shall have been the County Clerk of the same county at the time of the passing of this Act.

The section is as follows:

Sect. 16. And be it enacted, that from time to time when any Judge appointed under this Act shall die, resign, or be removed, and the district for which he was appointed shall not be consolidated with any other district, another Judge shall be appointed who shall be a barrister-at-law who shall be of seven years' standing, or who shall have practised as a barrister and special pleader for at least seven years, or who shall have been the County Clerk of the same county at the time of the passing of this Act; and every such appointment shall be made by the Lord Chancellor, or, where the whole of the district is within the Duchy of Lancaster, by the Chancellor of the Duchy of Lancaster. For supplying vacancies among the Judges of the County Court.

24. *In whom the Appointment to Vacancies vests.*—By the same section (16) the appointment to vacancies is vested in the Lord Chancellor, with a single exception in cases where the whole district is within the Duchy of Lancaster, when it is vested in the Chancellor of that Duchy. Appointment to vacancies.

25. *Judges may be removed.*—The office of Judge is held *quamdiu se bene gesserit.* Section 18 empowers the Lord Chancellor to remove any Judge for *inability or misbehaviour.* And the Chancellor of the Duchy of Lancaster may do the same with any Judge whose district is wholly within the Duchy. The section is as follows: Removal of Judges.

Sect. 18. And be it enacted, that it shall be lawful for the said Lord Chancellor, or, where the whole of the district is with- Judges of the County Court re-

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in the Duchy of Lancaster, for the Chancellor of the said Duchy, if he shall think fit, to remove for inability or misbehaviour any such Judge already appointed or hereafter to be appointed.

movable for inability, &c.

It is remarkable that in this, and section 16, there is introduced, *for the first time,* an allusion to the Chancellor of the Duchy of Lancaster. There is no provision in the Act giving to that functionary the appointment of the Judge *in the first instance;* but he is empowered to supply future vacancies, and vested with the same control over the first and future Judges as the Lord Chancellor. We are not aware if any of the existing districts be situate wholly within the Duchy, so as to come under the jurisdiction thus given to its Chancellor.

26. *Judge may be removed to other Districts.*—The 19th section empowers the removal of a Judge from one district to another, provided the salary of the latter be not less than that of the former. It runs thus:

Districts of Judges may be changed.

Sect. 19. Provided always, and be it enacted, that it shall be lawful for the Lord Chancellor or Chancellor of the said Duchy, within their several jurisdictions, to remove any Judge from any district to which he shall have been appointed, for the purpose of appointing him to any other district in which the salary of such Judge shall not be less than in the district from which he shall be so removed.

The language of this section certainly seems to strengthen the argument that the Legislature contemplated the appointment of a distinct Judge to *each district.* (See *ante*, p. 37.)

27. *Appointment not to be subject to 5 & 6 Vict. c. 122.*—The Judges of the Local Courts described in schedules (A.) and (B.) are not, by acceptance of the office of Judge of the County Court, to be deemed as having been appointed to hold a public office or employment, so as to deprive them of the compensation to which they may be entitled under the Bankruptcy Amendment Act, 5 & 6 Vict. c. 122.

Appointments of Judges who

Sect. 15. And be it declared and enacted, that the appointment of any person who at the passing of this Act shall by any

of the titles hereinbefore specified preside in or hold any Court constituted or held under any of the Acts cited in either of the said schedules (A.) and (B.), to be the Judge of any County Court, shall not be deemed an appointment to hold a public office or employment within the meaning of an Act passed in the sixth year of the reign of Her present Majesty, intituled "An Act for the Amendment of the Law of Bankruptcy," so as to deprive him of any compensation to which he may be entitled under the said Act.

have previously officiated in any County Court, not subject to 5 & 6 Vict. c. 122.

28. *Deputy to a Judge may be appointed.*—The Judge is empowered, by sect. 20, to appoint a deputy in case of illness or unavoidable absence, but the cause of such appointment is to be entered on the minutes of the Court.

Deputy may be appointed.

If the Judge be unable to make such appointment, the Lord Chancellor, or where the whole district is within the Duchy of Lancaster, the Chancellor of the Duchy, may make the same (Section 20.) This is the section:

Sect. 20. And be it enacted, that in case of illness or unavoidable absence, the cause whereof shall be entered on the minutes of the Court, it shall be lawful for the Judge appointed to hold any Court under this Act, or, in case of the inability of the Judge to make such appointment, for the Lord Chancellor, or, where the whole of the district is within the Duchy of Lancaster, for the Chancellor of the Duchy, to appoint some other person, who shall be a Judge appointed under this Act, or who shall have practised as a barrister-at-law for at least three years, or as an attorney of one of Her Majesty's Superior Courts of Common Law for ten years, but not then residing or practising as an attorney in the district for which the Court is holden, to act as the Deputy of such Judge during such illness or unavoidable absence; and it shall also be lawful for the Judge, with the approval of the said Lord Chancellor or Chancellor of the Duchy, to appoint a Deputy, who shall be a Judge appointed under this act, or who shall have practised as a barrister at-law for at least three years, to act for him for any time or times not exceeding in the whole two calendar months in any consecutive period of twelve calendar months; and every deputy so appointed, during the time for which he shall be so ap-

As to the appointment of a Deputy to a Judge.

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pointed, shall have all the powers and privileges and perform all the duties of the Judge for whom he shall have been so appointed.

Who may be Deputy.

29. *Who may be Deputy.*—Strangely enough, different qualifications are required in the Deputy appointed by the Judge and the Deputy appointed by the Lord Chancellor or Chancellor of the Duchy of Lancaster.

The Lord Chancellor or Chancellor of the Duchy may appoint as Deputy—

1. A Judge appointed under the Act.
2. A barrister-at-law who shall have practised for three years.
3. An attorney of one of the Superior Courts of Common Law who has practised ten years, but who is not then residing or practising as an attorney in the district for which the Court is holden.

The Judge, with the approval of the Lord Chancellor or Chancellor of the Duchy, may appoint as Deputy—

1. A Judge appointed under the Act.
2. A barrister-at-law who shall have practised three years.

The appointment of Deputy is limited to any time or times not exceeding in the whole two calendar months in any consecutive period of twelve calendar months. (Section 20.)

It is provided by section 3 of 13 & 14 Vict. c. 61, "that no Deputy Judge of any such Court, save and except the Westminster County Court of Middlesex, shall, during the time he acts or shall be entitled to act as such Deputy, practise as a Barrister in any Court within the district for which he acts or shall be entitled to act as such Deputy."

The Deputy is invested with all the powers and privileges of the Judge, and may perform all his duties. (Section 20.)

Judges may act as Justices if in the

Sect. 21. And be it enacted, that every Judge of the County Court whose name shall be inserted by Her Majesty in any

commission of the peace for the county, riding, or division of a county for which he is appointed Judge of the County Court may and shall act in the execution of the office of justice of the peace for the said county, riding, or division although he may not have such qualification by estate or interest in lands, tenements, and hereditaments as is required by law in the case of other persons being justices of the peace for a county, provided that he be not disqualified by law to act as a justice of the peace for any other cause or upon any other occasion than in respect of the want of such an estate or interest as aforesaid.

Commission of the peace.

Payment of Judges.

31. *Payment of Judges.*—By section 37, certain fees are directed to be demanded, as fees payable to the several officers; and schedule (D.) prescribes the Judges' fees. The entire subject of fees will come to be treated of in a subsequent section of this work. It is not necessary, therefore, to do more than refer in this place to the section appointing these fees, so far as it relates to the payment of the Judges. Section 37 enacts, "that there shall be payable on every proceeding in the Courts holden under this Act to the JUDGES, &c. of the several Courts, such fees as are set down in any schedule marked (D.) to the Act annexed, or which shall be set down in any schedule of fees reduced or altered under the powers hereinafter contained for that purpose and none other." Power is then given to one of the Secretaries of State to alter the scale of fees; and if it shall appear that they are more than sufficient, to order that only a part of them be paid to the Judge and other officers, but not exceeding the sums afterwards mentioned as the greatest salaries to be received by the Judges and Clerks. But, with respect to the Judges and officers of the Courts in schedule (A.) the fees are not to be reduced "below the average amount of their fees or emoluments during the seven years next before the passing of this Act, with a reasonable increase for any increase of business which they may severally have to perform by reason of this Act."

And by section 39 it is provided, that the Judge and other officers may be paid by salaries instead of fees. As this plan has been adopted by a recent order of the Treasury, dating from the 1st of January last—so far, at least, as respects the Judges and Clerks, we

copy the section, which provides also for certain compensations.

Officers of Courts may be paid by salaries instead of fees.

If Court abolished, no compensation allowed, except in certain cases.

Sect. 39. And be it enacted, that it shall be lawful for Her Majesty, with the advice of her Privy Council, to order that the Judges, Clerks, Bailiffs, and officers of the Courts holden under this Act, or any of them, shall be paid by salaries instead of fees, or in any manner other than is provided by this Act; and if Her Majesty shall be pleased, with the advice aforesaid, to make such order, or to order that any such Court shall be abolished, or that the district for which any such Court is holden shall be consolidated with any other district, or if any Act shall be passed whereby it shall be provided that the said Courts or any of them shall be abolished, or otherwise constituted than is provided by this Act, no such Clerk or Bailiff, nor any Judge, County Clerk, Treasurer, or other officer of any such Court, shall be entitled to any compensation on account of ceasing to hold his office, or to receive the fees allowed by this Act, or on account of his emoluments being affected by such abolition or alteration, unless he shall have presided or acted as Judge, Assessor, County Clerk, Treasurer, Clerk, Bailiff, or other officer, before the passing of this Act, in any of the Courts mentioned in the schedule (A.) to this Act annexed, in which case he shall be entitled to compensation for the loss of his fees or emoluments, in like manner and subject to the same regulations as he would have been entitled thereto under the provisions herein contained in case he had been deprived of any fees or emoluments by reason of the passing of this Act; and in such case all sums payable in the name of fees to such officers of the Court as shall be paid by salaries shall be paid from time to time to the Treasurer of the Court, who shall pay the said several salaries out of the proceeds of such fees, and the surplus shall form part of the general fund of the Court; and whenever the net amount of the fees shall not be sufficient to pay the said several salaries, the deficiency shall be made good and paid out of the consolidated fund of Great Britain and Ireland.

32. *Amount of Salary.*—The limit of the salary of a Judge is appointed by section 40, which provides that the greatest salary to be received by him shall

be twelve hundred pounds, except in cases of a Judge of either of the Courts named in schedule (A.) whose salary is not to be limited to any sum less than the annual average amount of the emoluments of his office for seven years next before the passing of this Act. The section is as follows:

Limiting amount of salaries to be paid under this Act.

Sect. 40. And be it enacted, that the greatest salaries to be received in any case by the Judges and Clerks of the Courts holden under this Act shall be twelve hundred pounds by a Judge and six hundred pounds by a Clerk, exclusive of all salaries to his clerks employed in the business of the Court, and other expenses incidental to his office, unless in the case of any Judge or Clerk of any such Court acting in the same capacity before the passing of this Act in any Court mentioned in the said schedule (A.), whose salaries shall not be limited to any sum less than the average amount of the fees and emoluments of their respective offices during the seven years next before the passing of this Act; provided always, that it shall be lawful for the Commissioners of Her Majesty's Treasury to allow in each case such sum as they shall in each case deem reasonable to defray travelling expenses, with reference to the size and circumstances of each district.

It is to be observed that the Act does not entitle the Judges of the Courts in schedule (A.) to demand the larger sum; it merely provides that they shall not, like the others, *be limited* to the sum of 1,200*l.* per annum. It will still be at the option of the Privy Council to appoint any sum within the limit of their previous emoluments.

In addition to the salary, the Treasury is empowered to allow to the Judges a reasonable sum to defray travelling expenses.

By section 7 of the new statute, 13 & 14 Vict. c. 61, it is enacted—

13 & 14 Vict. c. 61, s. 7.

That so much of the said act of the tenth year of Her Majesty as enacts that it shall be lawful for Her Majesty, with the advice of Her Privy Council, to order that the judges, clerks, bailiffs, and officers of the courts holden under that act, or any of them, shall be paid by salaries instead of fees, or in any manner other than is provided by that act, shall be repealed; and that it shall be lawful for the Commissioners of Her Majesty's Treasury, with the consent of one of Her Majesty's principal Secretaries of State, from time to time to order that the judges, clerks, bailiffs, and officers of the said courts, or any of them, shall be paid by salaries instead of fees, or in any manner other than is provided by the said act.

CAP. II.

THE TREASURER.

BOOK II. THE OFFICERS. — 2. *The Treasurer.* — *Section* 23.

33. *Appointment of Treasurers.*—The statute provides also, by section 23, for the appointment of Treasurers of the County Courts, as follows:

Treasury to appoint Treasurers of Courts holden under this Act.

Sect. 23. And be it enacted, that the Commissioners of Her Majesty's Treasury of the United Kingdom of Great Britain and Ireland shall appoint so many persons as they shall think fit to be Treasurers of the Courts holden under this Act, and may remove any such Treasurer, if they shall see occasion so to do, and appoint another person in his room; and every such Treasurer shall be paid by salary in such manner and to such amount as the said commissioners from time to time shall order; and the salary of every such Treasurer shall be paid out of the consolidated fund of the United Kingdom of Great Britain and Ireland: provided always, that the person appointed or acting as Treasurer before the passing of this Act to any Court holden under any Act cited in either of the said schedules (A.) and (B.), if not disqualified under this Act, shall be entitled to be the first Treasurer of the same Court respectively, when holden as a County Court under this Act, in every case in which a separate Treasurer shall be appointed exclusively for such Court, and shall in such case continue to exercise his office subject to the power of removal provided in this Act.

By the above section the right of appointment is vested in the Treasury, in whose discretion it lies to determine how many of these officers there shall be, and the districts to which they shall be attached.

Qualification of Treasurers.

34. *Qualification of Treasurers.*—The statute prescribes no qualification, so that the choice is wholly discretionary; only it is provided that the Treasurers

of the Courts in schedules (A.) and (B.) shall be entitled to be the first Treasurers of the same Courts when holden as County Courts, "in every case in which a separate *Treasurer shall be appointed exclusively for such Court*." This last passage is printed in *italic*, because it raises the doubt to *which Court* it is intended to refer, the old Court or the new one. Does the title to *the office* arise where there was a separate Treasurer for the local Court, or where a separate Treasurer shall be attached to it when converted into a County Court? The sentence is so worded and located that it may apply to either; the probable intent would seem to point to the former, but the employment of the future tense "shall be," almost compels the adoption of the latter, reading. Happily, the question has not arisen, and is not now likely to arise.

35. *Disqualifications.*—The statute has forbidden certain persons to be Treasurers, by the following section:

Section 28. Offices of Clerk, Treasurer, and Bailiff not to be conjoined.

Sect. 28. And be it enacted, that it shall not be lawful for the Clerk of any Court holden under this Act, or the partner of any such Clerk, or any person in the service or employment of such clerk or his partner, to act as Treasurer or High Bailiff of the Court; or for the Treasurer, his partner or clerk, or any person in the service or employment of such Treasurer or his partner, to act as Clerk or High Bailiff; or for the High Bailiff, his partner or clerk, or any person in the service or employment of such High Bailiff or his partner, to act as Clerk or Treasurer of the Court.

Disqualifications of Treasurer.

The Treasurer is thus prohibited from being—

1. The Clerk.
2. The partner of the Clerk.
3. In the service or employ of the Clerk, or partner of the Clerk.
4. The High Bailiff.
5. The partner of the High Bailiff.
6. The clerk of the High Bailiff.
7. In the service or employ of the High Bailiff, or his partner.

The disqualification is limited to the Court of which he is the Treasurer. But section 30, which inflicts a

penalty of 50*l.* for acting in violation of these prohibitions, makes a distinction that requires to be noted. The penalty is imposed upon "the Clerk of *such* Court," who shall accept the office of Treasurer "of *such* Court," and upon any person who "being the Treasurer of any such Court, or the partner of any such Treasurer, &c. shall accept *the office of Clerk or High Bailiff in the execution of this Act,"*—words very much wider in their meaning than those previously employed,—viz. "*of such Court,*"—and which can only be construed as extending the penalty to a Treasurer accepting the office of Clerk or High Bailiff *in any Court* constituted under this Act, while retaining his office of Treasurer.

By section 29, the Treasurer is also prohibited from being directly or indirectly engaged, either by himself or his partner, as attorney or agent for any party in any proceeding "*in the said Court;*" meaning, of course, the Court of which he is the Treasurer. This is the section:

Section 29. — Officers not to act as attorneys in the Court.

Sect. 29. And be it enacted, that no Clerk, Treasurer, High Bailiff, or other officer of the Court shall, either by himself or his partner, be directly or indirectly engaged as attorney or agent for any party in any proceeding in the said Court.

The following section inflicts a penalty of 50*l.* for the violation of any of these prohibitions:

Section 30. — Penalty of 50*l.* on non-observance of the two previous enactments.

Sect. 30. And be it enacted, that every person who, being the Clerk of any such Court, or the partner of such Clerk, or a person in the service or employment of any such Clerk or of his partner, shall accept the office of Treasurer or High Bailiff of such Court, or who, being the Treasurer of any such Court, or the partner of any such Treasurer, or a person in the service or employment of any such Treasurer or of his partner, shall accept the office of Clerk or High Bailiff in the execution of this Act, or who being the High Bailiff of such Court, or the partner of any such High Bailiff, or a person in the service or employment of any such High Bailiff or of his partner, shall accept the office of Clerk or Treasurer in the execution of this Act, and also every Clerk, Treasurer, High Bailiff, or other officer of any such Court who shall be, by himself or his partner, or in any way, directly or indirectly, concerned as attorney or agent

for any party in any proceeding in the said Court, shall for every such offence forfeit and pay the sum of fifty pounds to any person who shall sue for the same in any of Her Majesty's Superior Courts of Record, by action of debt or on the case.

Removal of Treasurer.

36. *Removal.*—The Treasurer, unlike the Judge, does not hold his office *quamdiu se bene gesserit.* The language of the statute differs materially in relation to these officers. Section 18 empowers the Lord Chancellor, if he shall think fit, to remove any Judge "for inability or misbehaviour;" but section 23 empowers the Treasury to "remove any such Treasurer, *if they shall see occasion to do so,* and appoint another person in his room." This would appear to be an absolute discretion, which might be exercised without cause shown; whereas, in the case of a Judge, a sufficient cause must be shown and proved.

Payment of Treasurer.

37. *Payment.*—The Treasurer is in no case to be paid by fees, but by "salary, in such manner and to such amount as the said Commissioners (of Her Majesty's Treasury) from time to time shall order." Nor is this salary to be paid out of the fee fund, but out of the consolidated fund of the United Kingdom. (Sect. 23.)

Security to be given by Treasurer.

38. *Security.*—By section 36 it is enacted, that the Treasurers "shall give security for such sum, and in such manner and form, as the Commissioners of Her Majesty's Treasury from time to time shall order, for the due performance of their several offices, and for the due accounting for and payment of all moneys received by them under this Act, or which they may become liable to pay for any misbehaviour in their office."

Duties of Treasurer.

39. *Duties of Treasurer.*—Very important duties are imposed upon the Treasurer, and large powers are vested in him for that purpose. He is, in fact, the trustee for the Court, its guardian, and representative.

His duties may be detailed under the following heads:

1. To receive the fees and fines.
2. To audit the accounts of the other officers, and render account to the audit board.

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3. To provide court-houses, gaols, and other necessary offices for the conducting of the business of the Courts.

40. (1.) *Receipts of Fees and Fines.*—This is provided by the 41st section, as follows:

Section 41. — Fees and fines to be accounted for to the Treasurer.

Sect. 41. And be it enacted, that the Clerk of every Court holden under this Act, from time to time as often as he shall be required so to do by the Treasurer or Judge of the Court, and in such form as the Treasurer or Judge shall require, shall deliver to the Treasurer a full account in writing of the fees received in that Court under the authority of this Act, and a like account of all fines levied by the Court, and of the expenses of levying the same, and shall pay over to the Treasurer, quarterly or oftener in every year, by order of the Court, the moneys remaining in his hands over and above his own fees, and such balance as he shall be allowed by order of the Court to retain for the current expenditure of the Court.

41. (2.) *To audit the Accounts of Clerks, and receive the Balance.*—This is directed by section 42, as follows:

Section 42. — Clerks' accounts to be audited and settled by Treasurer.

Sect. 42. And be it enacted, that the Treasurer of every Court holden under this Act shall from time to time, quarterly or oftener, as shall be directed by order of the Court, audit and settle the accounts of the Clerk and other officers of the Court, and shall receive the balance of the various moneys which such Clerk and other officers shall have received under this Act, and shall pay over to the Judge of the Court the amount of his fees, and make all such other payments as it shall be requisite to make thereout in accordance with the provisions of this Act, and shall from time to time pay the balance remaining in his hands, or so much thereof as he shall be directed to pay, into such bank, or otherwise as shall be directed by the commissioners of Her Majesty's Treasury.

42. *To render Account to Audit Board.*—The Treasurer is further required, by section 43, to render to the Audit Commissioners of the Treasury accounts of all moneys received and expended by him on account of the Courts in his district; and, by section

45, the said commissioners are directed to audit the same accordingly. They are as follow:

Cap. 2. The Treasurer.

Section 43.

Treasurer of the Court to render accounts to Audit Board.

Sect. 43. And be it enacted, that the Treasurer of every Court holden under this Act shall once in every year, and oftener if required, on such day as the Commissioners of Her Majesty's Treasury from time to time shall appoint, render to the Commissioners for auditing the Public Accounts of Great Britain a true account in writing of all moneys received and of all moneys disbursed by him on account of every Court holden under this Act of which he is Treasurer, during the period comprised in such account, in such form, and with such particulars of receipts and disbursement, or otherwise, as the said Commissioners of Audit shall from time to time require.

Section 45.

Accounts of Treasurers to be audited under powers of 25 Geo. 3, c. 52.

Sect. 45. And be it enacted, that the accounts to be kept by the several Treasurers on account of the said Courts shall be examined and audited by the Commissioners for auditing the Public Accounts of Great Britain, under the powers vested in them under an Act of the twenty-fifth year of the reign of King George the Third, intituled "An Act for the better examining and auditing the Public Accounts of this Kingdom," and under any Act now in force, or otherwise howsoever, except so far as the same are varied by this Act.

43. *Accounts, when audited, to be sent to the Treasury.*—The 47th section enacts, that the accounts, when so audited, shall be sent to the Treasury and certified by the Commissioners thereof.

Section 47.

Accounts when audited to be sent to Treasury.

Sect. 47. And be it enacted, that it shall not be necessary to declare the accounts of the said Treasurers before the Chancellor of the Exchequer, but the said Commissioners of Audit shall transmit a statement of every account examined and audited by them under the authority of this Act to the Lord High Treasurer, or the Commissioners of Her Majesty's Treasury for the time being, who, having considered such statement, shall return the same to the Commissioners of Audit, together with his or their warrant, directing them to make up and pass the account, either conformably to the statement, or with such variations as he or they may deem just and reasonable; and the account having been made up pursuant to such directions, and signed

by two or more of the said Commissioners for auditing the Public Accounts, shall remain deposited in the Audit Office, and shall have the same force and validity, and be as efficient in law for all purposes whatsoever, as if the same had been declared according to the usual course by the Chancellor of the Exchequer; and the said Commissioners shall thereupon, as soon as conveniently may be, cause such or the like certificate thereof, in the nature of a quietus, to be made out and delivered, as is now practised by them with regard to declared accounts, and which shall be equally valid and effectual to discharge the accountants, and to all other intents and purposes.

44. *How Balances shall be applied.*—And, by the 44th section, the said Commissioners are to direct how any balances that are in the hands of the officers shall be applied.

Section 44.

Commissioners of Treasury to direct how balances shall be applied.

Sect. 44. And be it enacted, that the Commissioners of Her Majesty's Treasury shall from time to time make such rules as to them shall seem meet for securing the balances and other sums of money in the hands of any officers of every Court holden under this Act, and for the due accounting for and application of all such balances and other sums of money.

Instructions of the Treasury.

45. *Instructions issued by the Lords of the Treasury.*—For the more effectually carrying into operation these provisions and securing uniformity of system in the manner of keeping the accounts, the Lords of the Treasury have issued a series of instructions to the Treasurers of the County Courts, which will be found in the following pages, with a more convenient arrangement.

46. *Treasurer to require of Clerk a Monthly Account.*—The Clerk is to transmit a monthly account of the fees received and fines levied, and the expenses of levy, of the suitors' money, and the balance in his hands. This is the instruction:

Inst. 1.

Treasurer to require of Clerk a monthly account.

Inst. 1. The Treasurer will require the Clerk of every Court to transmit to him immediately after the termination of each month, an account showing the amount of fees received under the authority of the Act during the month, distinguishing the Judge's fees, the Clerk's fees, the High Bailiff's fees, and the

general fund fees, together with an account of all fines levied during the month, and the expenses of levying the same. And likewise an account of the suitors' money, and the balance remaining in the hands of the Clerk at the termination of the said month; such accounts to be made out according to the form marked A. And the Clerk of every Court is, at the same time, to pay over to the Treasurer the amount of the Judge's fees, and of the general fund fees, and also such portion of the suitors' fund then in his hands as the Treasurer shall require.

For the Form of this Monthly Account, see the next chapter, which describes the duties of the Clerk.

47. *Accounts to be audited quarterly.*—The 2nd instruction requires the Treasurer to audit the Clerk's accounts quarterly, or oftener in the large court towns, if he shall deem it necessary, and to receive from him the *balance of the suitors'* money, and all other moneys in his hands except his (the Clerk's) own fees. But he is not to remove the books from the court town.

Inst. 2. The Treasurer will audit the accounts of the Clerk quarterly; namely, immediately after the 31st March, the 30th June, the 30th September, and the 31st December, in each year, or oftener in the large court towns, if he shall deem it necessary. And at the termination of such audit the Treasurer shall receive from the Clerk the balance of the suitors' money, and all other moneys remaining in his hands, except his (the Clerk's) own fees. And the Treasurer will not remove the books of the Clerk from the court town, so as to create any delay or inconvenience to the business of the Court. *Inst. 2.* Clerks' accounts to be audited quarterly.

48. *Form of Audit.*—It is expected to be a *bonâ fide* examination of the whole accounts—at least, to the extent of comparison of so many of the entries as may serve for a fair test of their general correctness.

Inst. 3. The Treasurer, in auditing the Clerk's accounts, will duly examine the various books kept by the Clerk, so as to satisfy himself of the correctness of the accounts by comparing the entries in the several books to such an extent as he may consider necessary for that purpose. *Inst. 3.* Form of audit.

49. *To pay the Fees of Judge and High Bailiff.*—The 4th instruction will probably be no longer applicable, unless it be understood to extend to the contemplated salary also. It is as follows:—

BOOK II. THE OFFICERS. — Cap. 2. The Treasurer. — Inst. 4. — To pay the fees of Judge and High Bailiff.

Inst. 4. The Treasurer will, immediately after the quarterly audit, pay over to the Judge the full amount of his fees; or, if the Judge should require it, the Treasurer may, from time to time between the quarterly audits, pay to him a portion of his fees, and the balance at the termination of each audit. The Treasurer will also pay over to the High Bailiff, in the same manner, such fees as may be due to the latter upon warrants of execution duly returned and completed.

50. *Form of Clerk's Accounts.*—The Treasurer is to require the Clerk to keep his accounts in a form provided by the rules; but as this will come to be considered more properly under the duties of THE CLERK, to that division of this treatise the reader is referred.

51. *Disbursements to be allowed.*—The 6th instruction directs the Treasurer to allow the disbursements of the Clerk for the necessary expenses of the Courts. As it is a question of much practical moment what may be considered such, before we comment upon it, let us copy the instruction:

Inst. 6. — Clerks' disbursements to be allowed.

Inst. 6. The Treasurer will, at the time of the audit, allow in the Clerk's accounts, out of the general fund account, all such disbursements as shall have been made or incurred for servants, repairs of court and offices, books, stationery, and all other necessary expenses, provided the same shall have been sanctioned in the manner required by the 55th section of the Act, and proper vouchers are produced.

The items specified, of course, present no difficulty: but questions will, no doubt, frequently arise upon the general descriptions appended to them of "all *other necessary expenses*, provided the same shall have been sanctioned in the manner required by the 55th section of the Act."

Disbursements sanctioned by sect. 55.

What are the expenses thus sanctioned? The 55th section provides, *inter alia*, that the Clerk of the Court, "under the direction of the said Commissioners, and subject to such regulations as they may require to be enforced, shall make all necessary contracts, or otherwise provide for *repairing* and *furnishing*, and for *cleaning*, *lighting*, and *warming* the said *court-houses and offices*, and for *supplying the said Court and offices with law and office books and stationery*, and for defraying *all other necessary ex-*

penses not otherwise provided for *incident to the holding of the said Courts.*"

Following, therefore, the plan adopted in this treatise of a tabular statement, as more convenient for reference, the disbursements which the Treasurer is by the 6th instruction directed to allow to the Clerks, are as follow:

Disbursements sanctioned by sect. 55.

1. The salaries of servants.
2. The repairs of courts and offices.
3. The furniture thereof.
4. The cleaning thereof.
5. The lighting and warming thereof.
6. The supplying of the Court and Offices with law books.
7. The supplying of the same with office books and stationery.
8. All the necessary expenses incident to the holding of the Court.

It is understood that the term "offices" includes the Clerk's office. What have been held to be "necessary expenses" we are not informed; but, among others, it may be stated, as a fact that serves to illustrate the interpretation of the term, that the Treasurers have allowed, and the Commissioners of the Treasury have sanctioned, the charge for advertising the days of holding the Courts in the provincial papers and in the *County Courts Chronicle*, as a central medium for the information of distant Courts and of the profession, who have not access to the local papers.

We are informed by some of the Clerks that among the Law books allowed to be supplied by them to each Court and to each office were, "Archbold's County Courts Practice," "The County Courts Law List," "Paterson's County Courts Practice," "The Law Digest," "Paterson's Practice of Insolvency," "Roscoe's Evidence," "Jagoe's Insolvency," "Bittleston and Wise's New Practice Cases," "The Law Times," "The County Courts Chronicle," and "Cox and Macrae's County Courts Cases."

A supply of all the forms, special as well as general, and also all the forms and books required in Insolvency, have been allowed.

It should be added, that by the 55th section it is further provided, "that no payment for any such charge shall be allowed in the Clerk's accounts until allowed under the hands of the Judge."

52. *To balance Clerk's Annual Account.*—Instruc-

Book II. The Officers. — Cap. 2. The Treasurer.

tion 7 directs the Treasurer to check the Clerk's annual balance sheet. The form of this account will be considered when we come to the duties of the Clerk. The instruction is as follows:

Inst. 7. — To balance Clerk's annual account.

Inst. 7. The Treasurer will obtain from the Clerk, once in every year, and the Clerk is hereby required to furnish the same, a balance-sheet of the Clerk's ledger, made out according to the form marked B.; and the Treasurer will afterwards check the balance-sheet in such way as he may deem necessary, so as to satisfy himself that the receipts have been duly entered and accounted for in the cash book, and posted into the ledger; but this duty need not be performed by the Treasurer at any specified period of the year, or simultaneously in all the Courts, but may be done at any convenient time, so that the duty is performed at least once in every year.

53. *To pay Moneys to Bank.*—This is provided for by the 8th instruction, as follows:

Inst. 8. — Treasurer to pay moneys to bank.

Inst. 8. The Treasurer will, from time to time, pay the moneys coming to his hands into such bank for security as he may think most desirable, taking care to keep the account of the same entirely separate and distinct from his private or any other account, at such banker's.

54. *To transmit quarterly Payments to Treasury.*—The directions of the 9th instruction as to this portion of the Treasurer's duties are these:

Inst. 9. — To transmit quarterly payments to the Treasury.

Inst. 9. The Treasurer will, within six weeks after the completion of each quarterly audit of the Clerk's accounts, transmit to Mr. Richard Hankins, at the Treasury Chambers, Whitehall, a general abstract of the accounts of each Court, showing the total amount of the fees received and appropriated during the quarter for the Judge, the Clerk, and the High Bailiff, and the amount of the general fund account, and suitors' fund account, and fines, so that the unappropriated balance remaining in the hands of the Treasurer at the termination of each quarter may be ascertained, in order that the Lords Commissioners of Her Majesty's Treasury may, if they shall think proper, direct any part of such unappropriated balance to be paid over to the credit of the consolidated fund; and the said general abstract is to be made out according to the form marked C.

That form is as follows:—

C.—Form of Account to be sent quarterly to the Treasury.—(See Instruction No. 9.)

A General Abstract of the Account of the following Courts comprised in Circuits Nos.   for the Quarter ending the   184 , as ascertained by the Treasurer of the District at the Audit of such Accounts.

Circuit and Court.	Receipts.																					Appropriation.																		Balance in hand remaining at the Quarter ending the 184		
	Judge's Fees.			Clerk's Fees.			Bailiff's Fees.			General Fund.			Suitors' Fund.			Net Fines.			Total.			Judge.			Clerk.			Bailiff.			Suitors.			Other payments.			Total.					
	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.
Circuit No. Bristol..	66	10	0	42	5	0	13	10	0	51	10	0	99	0	0	5	10	0	84	5	0	66	10	0	42	5	0	15	0	0	75	0	0	60	7	6	99	2	6	25	2	6
Bath ..	42	5	0	30	10	0	12	15	0	40	7	6	80	10	6	2	4	6	99	12	6	42	5	0	30	10	0	9	0	0	60	5	6	40	8	0	99	8	0	37	4	0

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55. *To report Neglect of the Clerks.*—The 14th instruction directs the Treasurer to report to the Lords of the Treasury any neglect or refusal on the part of the Clerks to comply with his instructions. It runs thus:

Inst. 14. — Treasurer to report neglect of Clerks.

Inst. 14. Should any of the Clerks neglect or refuse to comply with the directions of the Treasurer in regard to any of these instructions, it will be the duty of the Treasurer immediately to report the same to the Lords Commissioners of Her Majesty's Treasury.

56. *To write separate Letters on each subject, and keep Copies in Letter-book.*—The Treasurer is also directed in his communications with the Treasury to write separate letters on each subject, and to enter all official correspondence in a letter-book properly indexed. This is provided by

Inst. 15. — Directions as to correspondence.

Inst. 15. The Treasurer will take care that in any communications which he may have to make either to the Lords Commissioners of Her Majesty's Treasury, or to Her Majesty's Secretary of State for the Home Department, to write separate and distinct letters upon every different subject; and he will enter all such communications and any other official correspondence in a letter-book to be kept for that purpose, with proper index.

57. *To keep a Cash-book.*—He is also to keep a cash-book, in which every receipt and expenditure is to be entered daily, according to the form D. in the schedule, and also a ledger in the form E. in the schedule, showing the state of the accounts of each court-town.

Inst. 16. — Treasurer to keep a cash-book.

Inst. 16. The Treasurer is to keep a cash-book, in which every receipt and expenditure is to be entered daily, and as each transaction occurs, in order that at any moment the actual cash balance in hand may be ascertained; and also a ledger, showing the state of the accounts of each court-town, according to the forms marked D. and E.

The following are the Forms D. and E.:—

FORM D.

CASH BOOK.—(See Instruction No. 16.)

Dr. CASH.

Date.		Ledger Folio.	Letter or Document (if any).	£ s. d.	£ s. d.
1848 June 30	To Bristol General Fund, received from Clerk ..	1	.. ..	..	80 0 0
"	ToBristol Judge's Fees, do.	2	.. ..	..	100 0 0
"	To Bristol Bailiff's Fees on Execution, ditto	4	.. ..	..	2 0 0
"	To Bristol Suitors' Fund..	5	.. ..	..	150 0 0
July 10	To Bristol Old Court of Requests, balance from late Clerk	6	.. ..	..	200 0 0
July 12	To Bristol Court of Conscience, received from Corporation on account of Suitors' money	7	.. ..	..	500 0 0
July 14	To Bath General Fund, and other accounts, as above, as they arise....	8			
	The same for Gloucester, and the rest of the towns in the Circuits ..			£	

CONTRA. **Cr.**

Date.		Ledger Folio	Voucher No.	£ s. d.	£ s. d.
June 30	By Bristol General Fund:				
	Clerk's disbursements..	1			
	Office Furniture	..	1	5 0 0	
	Coal	..	2	1 10 0	
	Cleaning Court & Offices	..	3	2 10 0	9 0 0
June 30	By Bailiff's Fees upon Executions	..	5	..	2 0 0
July 4	By Bristol General Fund, Year's Rent of Court..	1	6	..	20 0 0
"	By ditto, Half-year's Rent of Offices	1	7	..	5 0 0
July 5	By Corporation of Bristol, paid on account of claims as sanctioned by Treasury Order....	9	8	..	800 0 0
July 6	By Bristol Judge's Fees, paid him	2	9	..	100 0 0
July 20	ByConsolidated Fund, paid per Order of Treasury..	10			
"	By Bristol Old Court of Requests, paid Clerk to meet Suitors' Call	6	..	..	50 0 0

BOOK II. THE OFFICERS.

Chap. 2. *The Treasurer.*

Form E. *Inst.* 16.

FORM E.

LEDGER.—(See Instruction No. 16.)

Dr. [BRISTOL] GENERAL FUND, EXECUTION FEES, AND SUITORS' ACCOUNT. **Cr.**

Date.		Letter or Document (if any).	General Fund. £	s.	d.	Execution Fees. £	s.	d.	Suitors' Money. £	s.	d.
1848 June 30	To Cash on General Fund Account ..	A.	25	0	0						
July 5	To Fees on Executions	B.	..	..	..	15		6			
	Suitors' Money on Quarterly Audit to 30th June (or other period as the case may be).	None.	..	..	..	..	..	..	50	0	0
		£									

Date.		Voucher No.	General Fund. £	s.	d.	Execution Fees. £	s.	d.	Suitors' Money. £	s.	d.
1848 June 30	By Clerk's Office Furniture	1	15	10	6						
	By Coals..........	2	4	7	0						
	By Office Rent (half-year)	3	7	10	0						
	By Printing and Stationery	4	40	7	0						
July 1	By Bailiff's Fees on Executions levied in the Quarter ending 30th June.	5	..	..	..	34	10	0			
	By Paid Clerk on account of Suitors Money, or balance in the Clerk's favour upon Quarterly Audit, as the case may be	6	..	..	..	..	..	..	75	0	0
		£									

58. *Receipts to be required.*—He is also to require receipts in form and manner following:

Cap. 2. The Treasurer.

Inst. 17.

Treasurer to require receipts in all cases.

Inst. 17. The Treasurer, in making all payments and disbursements, should require receipts; and where the sum amounts to 5*l.* and upwards, such receipt should be written on properly stamped paper; except in the payment of the Judge's fees and suitors' money paid to the Clerks, for which the written acknowledgment of the Judge and Clerk respectively on unstamped paper will be a sufficient voucher; and in cases where the party is unable to write, his mark will require a competent witness.

This exemption from stamps of the receipts of the Judge and Clerk, by a mere instruction of the Treasury, although in principle very proper, is somewhat curious, inasmuch as we are aware of no provision in the County Courts Act exempting their receipts from stamps; the Treasury, therefore, has in fact by this instruction authorized the Judges and Clerks to do an act in violation of an existing law.

59. *Payments to other parties than those entitled must be authorized by Power of Attorney.*—This is provided by

Inst. 18.

Power of attorney

Inst. 18. In cases where the payment is not made to the party apparently entitled, a power of attorney or other legal document authorizing the payment in question should be furnished.

60. *Account to be rendered to the Audit Board half-yearly.*—The statute provides, in section 43, that the Treasurer shall account once a year, or oftener if required, with the Treasury. By the 19th instruction the Treasury has directed that he shall render his accounts half-yearly. Each half-year's account is to run from January 1 to June 30, and from July 1 to December 31, and to be rendered within two months from the close of each half-year. The form of the account current is prescribed in the schedule thereto and marked F.

Insts. 19, 20

Treasurer to render half-yearly account to Audit Board.

Inst. 19. It will be seen by reference to section 43 of the Act, that the Treasurer of every County Court is to render once a year, or oftener if required, to the Commissioners for auditing the Public Accounts of Great Britain, a true account in writing

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of all moneys received and of all moneys disbursed by him on account of every Court of which he is Treasurer, in such form and with such particulars of receipt and disbursement as the Audit Board shall from time to time require.

The Lords Commissioners of Her Majesty's Treasury deem it requisite that each Treasurer shall render his account to the Audit Board half-yearly; namely, from the 1st January to the 30th June, both days inclusive; and from the 1st July to the 31st December, both days inclusive, such accounts to be rendered within two calendar months after the expiration of each half-year; the first account, however, is to be rendered on or before the 30th September, 1847, to include the period from the commencement of the business of each Court to the 30th June, 1847.

Inst. 20. The Treasurer will accordingly transmit to the Commissioners of Audit within two calendar months after the termination of each half-year, as before mentioned, an account current in the form marked F.

The following is Form F.:—

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FORM F.

ACCOUNT CURRENT.—(See Instruction No. 20.)

A. B., Treasurer of the Courts holden under the 9th & 10th Vict. cap. 95, comprised in the Circuits Nos. in Account Current with the Lords of the Treasury.

Dr.		£	s.	d.		Cr.	£	s.	d.
	To Balance brought forward from last account					By sums paid during the half-year, as per accompanying abstracts			
	To sums received during the half-year, as per accompanying abstracts					By balance carried to next account..			
	£					£			

Place and Date,

Signature,

I, do solemnly and sincerely declare that this Account is just and true, according to the best of my knowledge and belief, and I make this solemn Declaration, conscientiously believing the same to be true.

Declared before me, at this day of } *(Signed)*

(Signed) *Treasurer.*

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61. *To be accompanied with Receipts and Vouchers, &c.*—The account is to be supported by abstracts of receipts and payments, which are to be copies of the debit and credit side of the cash-book, and accompanied with receipts, vouchers, and bills of particulars. Forms for the abstracts are given in the schedule and marked G. and H.

Inst. 21. — Account to be accompanied with receipts, vouchers, &c.

Inst. 21. The account current is to be supported by abstracts of receipts and payments, the abstracts being copies of the debit and credit side of the cash-book (according to the forms marked G. and H.), and the said abstracts are to be supported by proper authorities, vouchers, and bills of particulars, which documents are to be transmitted in original to the Audit Office.

The following is

Form G. Inst. 21.

FORM G.

ABSTRACT OF RECEIPTS.

(See Instruction No. 21.)

ABSTRACT OF SUMS received by Treasurer of the Court holden at in Circuit No. from the to the 18 , inclusive, with Documents A. to herewith.

Date.		Letter or Document (if any).	From whom received and for what service.	Amount. £	s.	d.
			£			

Amounting to (*in words*).

Place and Date,

Signature.

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Form H. Inst. 21.

And the following is

FORM H.

ABSTRACT OF PAYMENTS.

(See Instruction No. 21.)

ABSTRACT OF SUMS paid by Treasurer of the Court holden at in Circuit No. from the to the 18 , inclusive, as per Vouchers No. 1 to No. herewith

Date.	No. of Voucher	To whom paid and for what service.	Amount.		
			£	s.	d.
		£			

Amounting to (*in words*).

Place and Date,

Signature,

62. *Documents and Vouchers to be endorsed.*—For the facilitating of reference, the documents are to be endorsed with letters of the alphabet corresponding with the entry in the abstract, and the vouchers are to be numbered consecutively. Thus:

Inst. 22. Documents to be endorsed.

Inst. 22. The documents (if any) delivered in support of the sums received and brought to account should be endorsed by letters of the alphabet commencing with the letter A, and corresponding with the entry in the abstracts; and the vouchers for payment should be numbered consecutively, commencing with No. 1.

BOOK II. THE OFFICERS. — *Cap. 2. The Treasurer.* — Accounts to be verified by declaration.

63. ***Accounts to be authenticated by solemn declaration.***—The Treasurer is to make a solemn declaration of the correctness of his accounts, in pursuance of stat. 46 Geo. 3, c. 141, according to the form following:

Form of declaration.

I,   , do solemnly and sincerely declare, that this Account is just and true, according to the best of my knowledge and belief, and I make this solemn declaration, conscientiously believing the same to be true.

(Signed)   *, Treasurer.*

Declared before me, at   ,
this   *day of*   .

This declaration is to be made before—

1. A Baron of the Court of Exchequer.
2. A Commissioner for taking Affidavits in the Court of Exchequer.
3. One of the Commissioners of Audit.

64. *Treasurers to provide court-houses, offices, &c.*—Very extensive and important duties are vested in the Treasurers in relation to the providing of court-houses and offices, for which purpose they are empowered to purchase or rent lands or messuages, and to erect buildings thereon; and all lands, messuages, and other real and personal estate and effects belonging to the Courts vest in the Treasurer for the time being and his successors in that office in trust for the purposes of this Act. This is effected by

Section 48. — Treasurers, with approval of Secretary of State, to provide court-houses, offices, &c.

Sect. 48. And be it enacted, that the Treasurer of any Court holden under this Act for which a court-house and offices, with necessary appurtenances, shall not have been already provided, or where such court-house and offices are inconvenient or insufficient, shall, as soon as conveniently may be, with the approval of one of Her Majesty's principal Secretaries of State, build, purchase, hire, or otherwise provide messuages and lands, with all necessary appurtenances, fit for holding the Court therein, and for the offices necessary for carrying on the business of the said Court, or, instead of providing separate buildings, may, with the like approval, contract with any person, being the owner of or having the control and management of any county or town-hall or other building, for the use and occupation thereof,

or of so much thereof as may be needed for the purposes of this Act, and subject to such annual rent, and to such conditions as to the repairs, alterations, or improvements of such hall or building, as may be agreed upon; and all lands, messuages, and other real and personal estates and effects belonging to the Court shall vest in the Treasurer for the time being, and in his successors in that office, in trust for the purposes of this Act.

65. *Consent of Secretary of State to be first had.*—It will be observed, that the consent of one of the principal Secretaries of State must be first obtained before the Treasurer can exercise the powers of this section. And the special attention of the Treasurer is directed to this proviso by the instructions, the 11th of which sets forth that

Inst. 11. Consent of Secretary of State for the Home Department to be first had.

Inst. 11. The Treasurer will take care not to incur any considerable expenses for providing or renting court-houses and offices under section 48 of the Act (further than he has already done under the recent instructions of the Lords Commissioners of Her Majesty's Treasury), without the approval of Her Majesty's Secretary of State for the Home Department, or their lordships.

66. *Provisions for the Purchase of Land.*—The power of purchasing land is to be regulated by the provisions of the Lands Clauses Consolidation Act (8 Vict. c. 18), where lands are taken by any other than voluntary agreement with the vendor. And if it be necessary to use the powers of that Act for a compulsory purchase, the Treasurer, with the approval of the Secretary of State, is to be deemed the "Promoter of the Undertaking" for which such lands are required, and so to be considered in construing the provisions of that Act.

Section 50. Power for purchasing land.

Sect. 50. And be it declared and enacted, that the provisions of the Lands Clauses Consolidation Act, 1845, shall apply to the purchase of lands by the Treasurer of any such Court for the purposes of this Act, except so much thereof as relates to the purchase and taking of lands otherwise than by agreement; and in construing the said Act the Treasurer acting with the approval of one of Her Majesty's principal Secretaries of State shall be deemed the Promoter of the Undertaking for which such lands are required.

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Thus land required for the purposes of this Act may be obtained—

1. By voluntary agreement; in which case the purchase will be regulated by the ordinary law of vendor and purchaser, as between private individuals.

2. If a voluntary agreement cannot be made, the Treasurer may, with the approval of the Secretary of State, compel a sale of the land required, under the provisions of the Lands Clauses Consolidation Act, for which purpose he is to be deemed the Promoter of the Undertaking for which the land is required.

What is a Promoter of the Undertaking.

67. *What is a Promoter of the Undertaking.*—It may be convenient to state briefly what is the meaning of the term "Promoter of the Undertaking," which the Treasurer is to be deemed for the purpose of a compulsory purchase of land.

By section 2 of the Lands Clauses Consolidation Act, 8 Vict. c. 18, it is enacted, that the expression "the undertaking" shall mean the works or undertaking, of whatever nature, which shall by the special Act be authorized to be executed; and the expression "the Promoters of the Undertaking" shall mean the parties, whether company, undertakers, commissioners, trustees, corporations, or private persons, by the special Act empowered to execute such works or undertaking.

68. *Power to borrow Money.*—To enable him to effect these objects, the Treasurer is, by the 51st section, empowered to borrow money for the purposes of this Act, with the sanction of the Treasury, and to execute securities for the same, which are to be binding on him and his successors in office, for securing interest and repayment out of the general fund. He is to keep a register of such loans, with the names of the persons by whom the loans were advanced, in the order in which they are advanced, and they are to be paid off in the same order.

Section 51.

Treasurer empowered to borrow money for the purposes of this Act.

Sect. 51. And be it enacted, that for the purpose of defraying the expenses of building, purchasing, or providing any messuages and lands for the purposes aforesaid, it shall be lawful for the said Treasurer to borrow and take up at interest so much money as he shall find to be necessary, the amount thereof, and

the rate of interest in each case, being first allowed by the said Commissioners of Her Majesty's Treasury; and the Treasurer may enter into and execute such securities as may be required, and the securities so entered into shall be binding on him and his successors in the office of Treasurer for securing repayment of the moneys borrowed, with interest for the same, out of the general fund herein-after mentioned, and shall enter in a book belonging to the Court, to be kept by him for that purpose, the names of the several persons by whom any money shall be advanced for the purpose aforesaid, in the order in which the same shall be advanced, and the moneys so borrowed shall be paid off in the same order.

General fund for repayment of moneys borrowed.

69. *General Fund to be raised for paying off Moneys borrowed.*—The fund for repayment of such loans is to be raised by means of a charge to be made upon the plaintiff in any suit brought in the Court for which the debt was incurred,—of sixpence when the debt or damage claimed exceeds 20*s.* and does not exceed 40*s.* and for every claim exceeding 40*s.* a charge equal to one-twentieth part thereof, or such other sum as the Treasury shall from time to time order. This is directed by section 52, and will come more properly to be considered when treating of "Fees." The latter part of this section alone relates directly to the present division of our subject. It provides that the moneys so raised shall be paid to the Treasurer, and the amount thereof shall accumulate, to form a fund to be called "The General Fund of the County Court of A. at B." and shall be applied in the following manner:

1st. To payment of interest.
2nd. To payment of rent and the expenses necessarily incurred in holding the Courts (for which see *ante*).
3rd. To paying off the principal sums borrowed, in the order in which they were borrowed.
4th. To payment of the other expenses charged on the general fund.

The *surplus*, if any, is to be paid to the consolidated fund.

The portion of the section which relates to the duties of the Treasurer is as follows:

Section 52, after enacting the means by which the fund shall be raised, proceeds thus:—

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And the Clerk of the Court shall keep an account of all moneys so paid to him, and shall pay over the amount from time to time to the Treasurer of the Court, and the amount thereof shall accumulate, to form a fund to be called "The General Fund of the County Court of at ," and shall be applied in the first place toward paying the interest of the several sums so borrowed, and in the second place toward paying the rent and other expenses necessarily incurred in holding the Court, and in the third place toward paying off the several principal sums borrowed, in the order in which they were borrowed, and in the fourth place toward defraying the other expenses herein charged on the said general fund, in such manner as the Judge, with the approval of one of Her Majesty's principal Secretaries of State, shall direct; and the surplus which shall from time to time accumulate, after providing for all the said expenses, shall be paid over to the credit of the Consolidated Fund of the United Kingdom of Great Britain and Ireland; subject, nevertheless, to any charge which may arise from any future deficiency of the same fund.

70. *General Directions to Treasurer.*—The 10th instruction directs the particular attention of the Treasurer to the provisions of the 51st, 53rd, and 54th sections of the Act, instructing him to be careful to obtain the sanction of the Treasury before he uses any of the powers thereby confided to him, and, whenever he may deem it necessary, to consult the Secretary of State. It runs thus:

Inst. 10. — General directions to Treasurer.

Inst. 10. The attention of the Treasurer is particularly directed to the 51st, 53rd, and 54th sections of the Act of Parliament, and he will govern himself in conformity to the provisions thereof, taking care to obtain the authority and sanction of the Lords Commissioners of Her Majesty's Treasury, or of Her Majesty's principal Secretary of State for the Home Department, in all cases where he is required so to do, or where he may think it necessary to consult their lordships or the Secretary of State before he takes any measures for complying with the directions of the Legislature.

It may be convenient to add, that the 51st section is that which empowers him to borrow money; the 53rd vests in him the property of the Courts, and the

54th empowers him to sell any of the messuages and lands so vested in him, if required for the discharge of debts, or for the purpose of providing other and more convenient buildings, &c. These powers will next come to be considered.

71. *Property of the Courts in Schedules (A.) and (B.) to vest in the Treasurer.*—All messuages, lands, and tenements, and all real estates and effects vested in the Commissioners, or other officers of any of the Courts in schedules (A.) and (B.), to be holden in trust for the purposes of such Court, are to be vested in the Treasurer of the County Court, and his successors, in trust for the purposes of this Act, for the like estate and interest, and subject to all the covenants, conditions, and agreements on which they were previously holden. The said Commissioners and officers are discharged from such covenants, &c. and all the moneys and securities for money, and other property and effects of any kind whatsoever, in the hands of such Commissioners or officers of any such Court, are to be transferred and delivered to the Treasurer of the County Court, and applied by him to the discharge of all claims and demands to which the same were liable in the hands of such Commissioners or officers, and the residue is to be applied to the same purposes as the general fund. This is the section:

Sect. 53. And be it enacted, that, as soon as a Court shall have been established in any district under this Act, all messuages, lands, and tenements, and all real estates and effects, vested in or belonging to the Commissioners, Clerks, Treasurers, Trustees, or other officers of any of the Courts mentioned in the said schedules (A.) and (B.), which were holden in trust for the purposes of such Court, shall vest in or belong to the Treasurer of the County Court for the time being, and his successors in the said office, in trust for the purposes of this Act, for the like estate and interest, and subject to all the covenants, conditions, and agreements on which the same were respectively holden; and the said Commissioners, Clerks, Treasurers, Trustees, and other officers, their heirs, executors, and administrators, shall be freed and discharged from all such covenants, conditions, and agreements, and from the consequences of their being unable to

Section 53.

Property of Courts in schedules (A.) and (B.) to vest in the Treasurer of the County Court.

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fulfil any covenants or agreements into which any of them may have lawfully entered in execution of the provisions of any of the said Acts, on or before the repeal of such Act, with respect to their estate or interest in such messuages, lands, tenements, real and personal estates and effects, in consequence of the vesting thereof in the said Treasurer; and all moneys and securities for money, and other property and effects of any kind whatsoever, in the hands of the Commissioners, Clerks, Treasurers, Trustees, or other officers of any such Court, shall be paid, transferred, and delivered to the said Treasurer, or to such person as he shall appoint to receive the same, and shall be applied in discharging all claims and demands to which the same were liable in the hands of such Commissioners, Clerks, Treasurers, Trustees, or other officers, and the residue thereof shall be applied to the same purposes to which the general fund is applicable.

Power to sell property of the Courts in schedules (A.) and (B.)

72. *Power to sell Property.*—By the 54th section the Treasurer is empowered, with the approval of the Treasury, and upon a certificate of the expediency thereof, under the hand of the Judge, to sell and dispose of the messuages, lands, and tenements vested in him under the provisions of this Act, which may not be needed for the purposes of the Act, or which he may think ought to be sold, for the discharge of any just debts, on any account of any Court of which the constitution shall be altered under this Act, or to provide other and more convenient buildings for holding a County Court. The proceeds are to be applied towards discharging such debts, and if insufficient for the purpose, such debts are to be treated as if they were debts which had been incurred for the purpose of building a court-house for the district in which the place is situate where such Court was holden, and shall be liquidated out of the general fund; and if that be insufficient, the deficiency shall be paid out of the consolidated fund. This is the language of the statute:

Section 54.

Provisions for out-standing liabilities.

Sect. 54. And be it enacted, that it shall be lawful for the Treasurer of the County Court, with the approval of the Commissioners of Her Majesty's Treasury, and upon the certificate of the expediency thereof under the hand of the Judge, to sell and dispose of all messuages, lands, and tenements

which may be vested in him under the provisions of this Act which shall not be needed for the purposes of this Act, or which the Treasurer shall think ought to be sold, for the purpose of better enabling him to discharge any just debts on account of any Court of which the constitution shall be altered under this Act, or to provide other and more convenient buildings for holding a County Court ; and the proceeds of all such sales, and also all moneys and securities for money which shall be paid, transferred, or delivered to him on account of any such Court as aforesaid, shall be applied towards discharging such debts ; and in every case in which at the time of the alteration of the constitution of the Court there shall be any just debts owing on account of any such Court, or any salaries or annuities legally or equitably chargeable upon or payable out of the fees of such Court, or out of any fund to which such fees are payable, over and above what may be discharged by the moneys and effects so paid, transferred, or delivered to the Treasurer on account of such Court, and over and above the proceeds of the sale of any such messuages, lands, and tenements, in case the same or any part thereof shall be sold, such debts, salaries, and annuities shall be treated as if they were debts which had been incurred for the purpose of providing a court-house for holding the County Court for the district in which the place is included where such Court was holden, and shall be liquidated out of the general fund herein-before mentioned, if the same shall be sufficient for that purpose, and any deficiency therein shall be paid out of the consolidated fund of the United Kingdom of Great Britain and Ireland.

The language at the commencement of this section is so general that it will probably be taken by most readers as giving to the Treasurers of all the County Courts power to sell any lands vested in them under the provisions of this Act. But the subsequent part of the section shows that it refers only to the property of the Courts in schedules (A.) and (B.) vested in them by the preceding section (the 53rd). There is no equivalent provision for the sale of lands purchased under this Act.

73. *Treasurer to communicate with the Treasury.*— The 12th instruction reiterates the recommendation to

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the Treasurer to apply to the Treasury for whatever information or guidance he may need.

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Inst. 12.

Treasurer to apply to the Treasury for guidance.

Inst. 12. Whenever the Treasurer requires any general information for his guidance, he will communicate with Mr. Hankins at the Treasury, who will afford every assistance in his power upon any matter brought under his notice. But on all subjects of importance connected with the duties of the Treasurer involving any considerable outlay of money, or other financial operations, the Treasurer should communicate directly with the Lords Commissioners of the Treasury.

74. *Penalties for Misconduct.*—The same penalties for misconduct are imposed upon the Treasurer as upon the other officers. By section 116, if "charged with extortion or misconduct, or with not duly paying or accounting for any money levied by him under the authority of this Act," the Judge may inquire in a summary way, and "make an order for repayment of any money extorted, or for the due payment of any money so levied as aforesaid, and for the payment of such damages and costs as he shall think just." And he may also impose a fine not exceeding 10*l.* for each offence, as he shall deem adequate. The next section (the 117th) is still more stringent, and therefore we give it entire.

Section 117.

Penalty on officers taking fees besides those allowed.

Sect. 117. And be it enacted, that every Treasurer, Clerk, Bailiff, or other officer employed in putting this Act or any of the powers thereof in execution, who shall wilfully and corruptly exact, take, or accept any fee or reward whatsoever, other than and except such fees as are or shall be appointed and allowed respectively as aforesaid, for or on account of any thing done or to be done by virtue of this Act, or on any account whatsoever relative to putting this Act into execution, shall, upon proof thereof before the said Court, and in the case of a Clerk, Treasurer, or High Bailiff on allowance of the finding of the Court by the Lord Chancellor, be for ever incapable of serving or being employed under this Act in any office of profit or emolument, and shall also be liable for damages as herein provided.

75. *Protection of Treasurers.*—But the statute has also thrown about them the same protections as it has given to the other officers. By section 113, the

Judge is invested with a summary power of committal of, or imposing a fine upon, any person who shall "wilfully insult" him "during his sitting or attendance in Court, or in going to, or returning from the Court." Section 138 limits all actions against officers for anything done in pursuance of the Act, to three months after the fact committed, and requires one calendar month's notice in writing to be given before it is commenced, and provides that no plaintiff shall recover if sufficient amends shall have been made before action brought, or if after action brought a sufficient sum of money shall be paid into Court with costs by the defendant. And the 139th section enacts, that if any such action be brought against any officer of the Court and the jury find no greater damages than 20*l.* the plaintiff shall have no costs, unless the Judge certify in Court on the back of the record that the action was fit to be brought in such Superior Court.

CAP. III.

THE CLERK.

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76. *Definition of the Term.*—The interpretation clause (sect. 142) enacts, that in construing the Act the word "*Clerk*" shall be understood to mean "*Chief Clerk*" or "*Registrar.*"

77. *Appointment of.*—The appointment of the Clerk is vested in the Judges, subject to the approval of the Lord Chancellor.

Section 24. — Appointment of Clerks vested in Judges, subject to approval of Lord Chancellor.

Sect. 24. And be it enacted, that for every Court under the authority of this Act there shall be a Clerk, who shall be an attorney of one of Her Majesty's Superior Courts of Common Law, and whom the Judge shall be empowered to appoint, subject to the approval of the Lord Chancellor, and, in case of inability or misbehaviour, to remove, subject to the like approval; and, until otherwise directed by Her Majesty, with the advice of her Privy Council, every such Clerk shall be paid by fees as hereinafter provided; and in cases requiring the same, such Assistant Clerks as may be necessary shall be provided and paid by the Clerk of the Court.

Clerk to be an attorney-at-law.

78. *Who shall be.*—For every Court there is to be a Clerk, who shall be an attorney of one of Her Majesty's Superior Courts of Common Law.

79. *Two Clerks may be appointed in Populous Districts.*—In certain cases, in populous districts, where he may deem it expedient, the Lord Chancellor is empowered to appoint two persons to execute the office of Clerk jointly, both of them being qualified as above provided. If in any of the Local Courts named in schedules (A.) and (B.), and converted into County Courts, there had been previously more than one Clerk, the same number of Clerks are to be continued, unless

the Lord Chancellor should direct the number to be reduced. The section is as follows:

Section 25. In populous districts Lord Chancellor may direct two Clerks to be appointed.

Sect. 25. And be it enacted, that it shall be lawful for the Lord Chancellor, in populous districts in which it shall appear to him expedient, to direct that two persons shall be appointed to execute jointly the office of Clerk, under such regulations as to the division of the duties and emoluments of the said office as shall be from time to time made by order of Court in case of difference between them, each of such persons being qualified as is hereinbefore provided in the case of a single Clerk; and where under the provisions of any Act cited in either of the said schedules (A.) and (B.) more than one Clerk is now acting in and for the Court holden under such Act, the same number of Clerks shall be continued, unless it shall seem expedient to the Lord Chancellor to order that such number be reduced.

80. *Deputy Clerk may be appointed.*—Provision is made by section 26 for the appointment of a Deputy to act for the Clerk in case of illness or unavoidable absence. This appointment is to be made by the Clerk, with the approval of the Judge, or if the Clerk be unable to make such appointment, then the Judge may do so. The Deputy must possess the same qualification as a Clerk, that is, he must be an attorney-at-law. He may be removed at pleasure by the party appointing him; and while acting as such Deputy he is to have the same powers and privileges, and be subject to the same provisions, duties, and penalties for misbehaviour, as if he were the Clerk. For a specification of these, reference must be made to the subsequent parts of this section, which treat of the duties and liabilities of the Clerk. The language of the statute is as follows:

Section 26. In case of illness, &c. of Clerk, a Deputy may be appointed.

Sect. 26. And be it enacted, that it shall be lawful for the Clerk of any such Court with the approval of the Judge, or, in case of inability of the Clerk to make such appointment, for the Judge to appoint from time to time a Deputy, qualified to be appointed Clerk of the said Court, to act for the Clerk of the said Court at any time when he shall be prevented by illness or unavoidable absence from acting in such office, and to remove such Deputy at his pleasure; and such Deputy while acting under such appointment shall have the like powers and privi-

leges, and be subject to the like provisions, duties, and penalties for misbehaviour, as if he were the Clerk of the said Court for the time being.

Although not so expressly enacted, the appointment of a Deputy Clerk ought to be in writing, and a minute of the appointment should be entered upon the Record of the Court, and should state the cause of such appointment, and that it is with the approval of the Judge, if made by the Clerk, or otherwise that it is the appointment of the Judge. In the former case, the appointment should be signed by the Clerk and countersigned by the Judge; in the latter, it should be signed by the Judge only. The following may, perhaps, be a convenient form for this appointment:

APPOINTMENT OF DEPUTY CLERK BY THE CLERK.

I, A. B., being the Clerk of the County Court of at being prevented by ("illness" *or* "unavoidable absence") *from acting in my said office, do hereby, with the approval of C. D., Esq., the Judge of the said County Court, appoint E. F., of in the county of gentleman, to be my Deputy during the period of such my* ("illness" *or* "unavoidable absence").

Given under my hand this day of 184 .

(Signed) A. B.,

Clerk of the said County Court.

Approved by me, C. D.,

Judge of the said County Court.

APPOINTMENT OF DEPUTY CLERK BY THE JUDGE.

Whereas A. B., Clerk of the County Court of at is prevented by ("illness" *or* "unavoidable absence") *from acting in his said office, and he is also unable to appoint a Deputy qualified to act for him, I do hereby, in pursuance of the provisions of the statute in such case, appoint E. F., of in the county of gentleman, to be Deputy for the said A. B. in his office of Clerk of the said Court during the period of such his* ("illness" *or* "unavoidable absence") *as aforesaid.*

Given under my hand this day of 184 .

(Signed) C. D.,

Judge of the said County Court.

81. *Clerks of Courts in Schedules (A.) and (B.)*— Special provisions are made by the 31st section for persons who had been performing the duties of Clerk in the Local Courts held under statutes cited in schedules (A.) and (B.) It is enacted, that persons who shall be filling that office on the 1st day of June in this year (1846), and who shall continue to hold it "at the time when such Act shall be repealed under the provisions of this Act, whether or not qualified as hereinbefore provided, shall be entitled, if not disqualified under this Act, to be the first Clerks, &c., of the same Court when holden as a County Court under this Act." To interpret this provision, it is necessary to ascertain precisely what is the time when the local Act named in the said schedules was repealed under the provisions of the County Courts Act. For this, reference must be had to the 5th section, which provides for the time and manner of the conversion of the Local Courts named in those schedules into County Courts. By that section it is enacted, that it shall be lawful for Her Majesty, with the advice of her Privy Council, to order that any Court holden for the Recovery of Small Debts, &c., within the provisions of any Act cited in either of the schedules annexed to this Act, and marked (A.) and (B.) respectively, shall be holden as a County Court, and thereupon "it shall be lawful for Her Majesty, with the advice aforesaid, to assign a district to every such Court, either greater or less than the district in which the Court holden under the provisions of any such Act now has jurisdiction, and to alter the place of holding any such Court, *or to order that any such Court be abolished;* and every such Court shall continue to be holden under the Act according to which it is now constituted or regulated, *until the time mentioned in any such Order* which shall be made with reference to such Court; and *from and after the time mentioned in any such Order, the Act* or Acts under which such Court *is now* constituted, so far as the same relate to the establishment, or jurisdiction, or practice of a Court for the Recovery of Small Debts or Demands, *shall be repealed,* &c.; and such Court so ordered to be holden as a County Court shall thenceforth be holden as a County Court under this Act, and *in all respects as if it had been originally constituted under the provisions of this Act.*" And the 6th section pro-

Clerks of Courts in schedules (A.) and (B.)

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vides that, "at the time mentioned in any such Order (of Council), which shall have been made as aforesaid, for holding any of the Courts mentioned in either of the said schedules as a County Court under this Act," the recited Acts and all other Acts affecting its jurisdiction are repealed. And by the 8th section it is provided, that "any Order in Council made for the purposes of this Act shall be published in the *London Gazette;* and notice of the intention of Her Majesty to take into consideration the propriety of making any such Order shall be published in the *London Gazette* one calendar month at least before any such Order shall be made."

Reg. v. *Gibson* (1 C. C. Chron. 121).

Upon this a question of considerable interest has been raised in the case of *Reg.* v. *Gibson,* 1 C. C. Chron. 121, which was a motion for a rule calling upon Mr. Gibson, the present Clerk of the County Court of the St. Albans district, to show cause why a *quo warranto* should not issue in respect of his said office. The facts were stated to be, that the applicant, Mr. Ablett, had been the Clerk of the Local Court of St. Albans under one of the statutes comprised in schedules (A.) and (B.), namely, the 25 Geo. 2, c. 38. But Mr. Ablett is not an attorney. The Order in Council abolishing the old Court was issued on the 13th of March, and the Order in Council establishing the St. Albans County Court, which comprised the district of the old Local Court, with some additions, was not issued till the 15th of March. Upon these facts the question was whether, under the 34th section, above cited, Mr. Ablett was entitled to be Clerk of the new County Court; for if he was not *entitled* to the office under that section, he could not have been *appointed of grace,* because he was disqualified by reason of his not being an attorney. The Judge came to the conclusion that he had not a *title* to the office under that section, and that consequently he was compelled to appoint a Clerk duly qualified. On the part of Mr. Ablett, it was contended that he was filling the office at the time of the abolition of the old Court, and consequently was *entitled* to be Clerk of the new Court. On the other hand, it was argued, on behalf of Mr. Gibson, the present Clerk, that the old Court was not in existence at the time the new Court was established, and consequently that the Clerk did not come within the provisions of the Act

relating to the office of Clerk. The Court purposely abstained from giving any opinion upon the questions raised, but, deeming them of so much importance as to require a solemn argument in full Court, the rule was made absolute.

The point at issue deserves some attention. The statute enacts that the persons filling the office of Clerk on the 1st of June, and who shall continue to hold it *at the time when such Act shall be repealed* (whether or not qualified, &c.) are to be entitled, if not disqualified under this Act, to be the first Clerks, &c.

Who are the persons holding the office at the time when such Act is repealed?

To discover this, it is necessary to ascertain *when* such Act *was* repealed.

What is to constitute a repeal of such Act?

The 5th section, above cited, provides for this. It enacts, that Her Majesty may assign a district to every such Court, and alter the place of holding it, or order *that any such Court be abolished; and such Court is to continue until the time mentioned in any such order;* and "from and after the time mentioned in any such Order, the Act or Acts under which such Court is now constituted, so far as the same relate to the establishment, or jurisdiction, or practice of a Court for the Recovery of Small Debts or Demands, shall be repealed;" and such Court is thenceforth to be holden as a County Court, as if it had been originally constituted under the provisions of the County Courts Act.

The Order in Council of the 9th of March, 1847, (see *ante*, p. 11,) provides as follows:—"Her Majesty, &c., is pleased, by and with the advice of her Privy Council, to order, and it is hereby ordered, that on the *thirteenth day of March* in this year, the several Courts holden for the Recovery of Small Debts or Demands, under the provisions of any Act or Acts cited in one or both of the schedules annexed to the said Act of the last session of Parliament, and marked (A.) and (B.) respectively, *shall be abolished, &c.* [here follow certain excepted Courts], and also that each of the several Courts of Request or Conscience, heretofore holden for the Recovery of Debts and Demands, in the several cities, towns, and places hereafter mentioned within the provisions of some one or more of

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the Acts cited in the schedule annexed to the said Act of the last session of Parliament, and marked (A.) shall be holden as a County Court, on and after *the said fifteenth day of March,"* &c.

Thus, the Order in Council appoints the *thirteenth* of March as the time when the said Courts shall *be abolished*, and the *fifteenth* of March as the time when they shall be holden as County Courts.

Referring again to the statute, it will be observed that Her Majesty in Council is empowered to order that any Court in the said schedules shall *be abolished*, and to appoint the time for its abolition; up to that time, the Court is to continue to be holden under the Act by which it was constituted; but, from the time mentioned in the Order, the Act is to be repealed, and the Court so ordered to be holden as a County Court is thereupon to be holden as such.

The question, therefore, resolves itself into this: Is the time appointed by the Order in Council for *the abolition* of the old Court, or that at which it directs it *to be holden as a County Court*, to be construed as the time contemplated by the statute at which the local Act is to be repealed?

One time is appointed by the Order in Council for the abolition of the Court, and another for the repeal of the Act under which it was holden. The language of the section that relates to the appointment of Clerks is, that the office shall be continued to the person filling it "at the time when such Act *shall be repealed.*" Is such Act repealed by that portion of the Order in Council abolishing the Court, or by that portion which in terms orders that the Act shall be repealed? Our impression is certainly strong that the abolition of the Court was the repeal of the Act, and that if the Act had not been ordered to be repealed in words, it would have been repealed by the order for the abolition of the Court. If this first part of the Order would have repealed the Act, had it stood alone, not the less will it do so because the same thing is repeated subsequently in more express terms; and for these reasons we are inclined to the conclusion that all the Local Courts named in the schedules were abolished, and their Acts repealed, on and from the *thirteenth* of March; and that all who were then Clerks on that day (having been also such on the 1st of June preceding) were entitled to be Clerks of the

new County Courts into which they were converted, even although they had not the qualification required by the County Courts Act, namely, that of being an attorney.

But it is plain that they must not be subject to any of the *disqualifications* of the County Courts Act; such as holding the office of Treasurer, and such like, which will be more particularly stated presently.

The following is the section *verbatim:*

Section 34.

Provision respecting Clerks and High Bailiffs of Courts under Acts cited in schedules (A.) and (B.)

Sect. 34. Provided always, and be it enacted, that the persons holding the offices or performing the duties of Clerks and High Bailiffs in any Court holden under any Act cited in either of the said schedules (A.) and (B.) on the first day of June in this year, and who shall continue respectively to hold the same offices or to perform the same duties at the time when such Act shall be repealed under the provisions of this Act, whether or not qualified as herein-before provided, shall be entitled, if not disqualified under this Act, to be the first Clerks and High Bailiffs of the same Court when holden as a County Court under this Act, and shall continue to execute their several offices, subject to the power of removal provided in this Act, except that the Clerks and High Bailiffs already appointed to any Court named in the said schedule (A.) shall be removable only for such cause as would have warranted their removal under the Acts according to which their Court is now holden; and where, under the provisions of any of the said Acts, more than one Clerk was on the said first day of June, and shall be, when such Act shall be repealed, under the provisions of this Act, acting in and for any of the said Courts, or in and for any district or division of any Court, the same persons shall jointly execute the office of Clerk of the same Courts as aforesaid, under such regulations as to the division of the duties and emoluments of the said office as shall be from time to time made by order of Court, in case of difference between them: provided always, that if the Clerk of any Court cited in the said schedule (A.) shall, within one calendar month next after the repeal of the Act under which it is now holden, decline to accept the office of Clerk to the same Court as holden under this Act, it shall be lawful to the Commissioners of Her Majesty's Treasury, if they shall think fit, to take into consideration the special circumstances of each case, and to award such compensation to

be paid to such Clerk as under the circumstances they shall think reasonable, in the manner herein provided in the case of persons whose emoluments will be diminished or taken away by this Act.

82. *Clerks of the Bristol Courts.*—A special provision is made by section 35, for the Clerks and officers of the two Courts called respectively the *Court of Conscience* and the *Court of Requests*, which had previously existed in the city of Bristol, as follows:

Section 35.

Provision respecting the officers of the two Courts at Bristol.

Sect. 35. And whereas the jurisdiction of the Court of Conscience in the city of Bristol, under the provisions of an Act passed in the first year of the reign of Her Majesty, and cited in the schedule (A.) to this Act annexed, extends to the recovery of debts and demands not exceeding forty shillings; and the jurisdiction of the Court of Requests in the said city, under the provisions of an Act passed in the fifty-sixth year of the reign of King George the Third, and also cited in the said schedule (A.), extends to the recovery of debts and demands above forty shillings and not exceeding fifteen pounds; be it enacted, that in case the persons now holding the offices of Registrar and Clerk and Deputy Registrar of the said Court of Conscience shall continue to hold the same offices respectively when a Court shall be established in the said city of Bristol under the provisions of this Act, they shall be entitled to hold the office and execute the duties of Clerks of any such Court in all causes and matters relating to debts, claims, and demands not exceeding forty shillings, under such regulations as to the division of the duties and emoluments of the said office as shall be from time to time made by order of Court, in case of difference between them; and in case the person now holding the office of Clerk of the said Court of Requests shall continue to hold the same office at the time when such Court shall be established, he shall be entitled to hold the office and execute the duties of Clerk of any such Court in all causes and matters relating to debts, claims, and demands exceeding forty shillings; and the said persons severally shall be removable only for such cause as would have warranted their removal under the several Acts according to which the said Courts are now holden.

Disqualifications for the

83. *Disqualifications for the office of Clerk.*—The 28th section, already noticed as it affects the Treasu-

rers, extends also to the case of Clerks; but as the object of this Treatise is to give, under its proper heading, all the law relating to each particular subject, even although it may be necessary to repeat the same sections under some other heading, so as to prevent the inconvenience and risk of reference to and fro, we purpose to deal with the present topic as if it had not been elsewhere touched upon. Office of Clerk.

The disqualifications for the office of Clerk are—

1st. Being the Treasurer or High Bailiff of the Court.

2nd. Being the partner of the Treasurer or High Bailiff of the Court.

3rd. Having in his service any person who is the Treasurer or High Bailiff of the Court.

4th. Being the partner of, or having in his service, any person who is the partner, or in the service, of the Treasurer or High Bailiff.

This is provided by section 28, in the terms following:

Section 28. — Offices of Clerk, Treasurer, and Bailiff not to be conjoined.

Sect. 28. And be it enacted, that it shall not be lawful for the Clerk of any Court holden under this Act, or the partner of any such Clerk, or any person in the service or employment of such Clerk or his partner, to act as Treasurer or High Bailiff of the Court; or for the Treasurer, his partner or clerk, or any person in the service or employment of such Treasurer or his partner, to act as Clerk or High Bailiff; or for the High Bailiff, his partner or clerk, or any person in the service or employment of such High Bailiff or his partner, to act as Clerk or Treasurer of the Court.

84. *Clerk is not to act as Attorney in the Court.*—By the 29th section the Clerk is prohibited, either by himself or partner, to be directly or indirectly engaged as the attorney or agent for any party in any proceeding in the Court of which he is Clerk. These are the words of the statute:

Section 29. — Officers not to act as attorneys in the Court.

Sect. 29. And be it enacted, that no Clerk, Treasurer, High Bailiff, or other officer of the Court shall, either by himself or his partner, be directly or indirectly engaged as attorney or agent for any party in any proceeding in the said Court.

Upon this, a question of considerable importance has arisen; namely, whether the Clerk of one Court Can the Clerk of one

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Court practise in another Court in the same county?

may practise in another Court in the same circuit or in the same county?

The question turns upon the meaning that is to be given to the words "in the said Court."

The "*said* Court" refers to the same term in the previous part of the section, "that no Clerk, &c., of *the* Court shall," &c. Who is the Clerk of *the* Court? To ascertain this, we must turn to the language of the appointment in section 24, and this provides "that for *every* Court under the authority of this Act there *shall be a Clerk.*"

The words "the Clerk of *the* Court," in the 29th section, therefore, clearly mean that *Court* only to which he is appointed under the 24th section.

But the real difficulty of the question arises upon the 2nd section, which throws very great doubt upon the construction to be given to the term "*Court*" in the subsequent sections. By that it is enacted, "that it shall be lawful for Her Majesty, with the advice aforesaid, to divide the whole or part of any such county, including all counties of cities, &c. *into districts*, and to order that *the County Court* shall be holden for the recovery of debts and demands under this Act, in *each of such districts;*" and further on, "and to order from time to time that the number of districts in and for which *the Court* shall be holden shall be increased, &c. and with the advice aforesaid, to alter the place of holding *any such Court*, or to order that the holding *of any such Court* be discontinued, &c. and with the advice aforesaid, to declare by what name, and in what towns and places, *the County Court* shall be holden in *each district.*"

Now, it is plain, from the entire language of this section, that the Legislature contemplated all the Courts being held in the same county as *one and the same County Court*, having its sittings in different districts. *The* County Court is expressly directed to be held in *each district.* If, therefore, there be in fact but one County Court in each county, and the various district Courts are only, as it were, adjourned sittings of the same Court, it would follow that the Clerk of any Court may not act as attorney or agent for any party in any proceeding in any other Court *in the same county.*

The question being open to so much doubt, and the penalty being a serious one, it would at least be

most prudent for the Clerk to avoid the risk of error until the 2nd section has received a judicial interpretation, which it will have in the *quo warrantoes* now pending in the Queen's Bench to try the validity of the appointments of some of the Judges.

The same question might also be raised upon the appointment of most of the Clerks, for if the words in the 24th section relating to the appointment, "for *every Court* under the authority of this Act there shall be a Clerk," be construed by the description of the term "a Court" in the 2nd section, and that receive the interpretation which its language appears to imply, namely, "the County Court" of the whole county sitting in various districts, then is almost every appointment of Clerk invalid, for "every Court" would, in such case, have, not a "Clerk," but many Clerks. But this again might be cured by the provision that in populous districts more than one Clerk may be appointed to the same Court.

Cheek v. *Park* (1 C. C. Chron. 14)

The question was early raised in the Hertford County Court in the case of *Cheek* v. *Park* (1 C. C. Chron. 14), in which the Clerk of the County Court of Barnet appeared as an attorney in the County Court of Hertford, in the same county. On the objection being taken, the learned Judge (Mr. Koe) said that upon consideration given to the point he had come to the conclusion that the Court "was confined to the district of Hertford, and consequently that the Clerk of the Barnet Court was entitled to appear."

Penalty for non-observance.—A penalty of 50*l.* is imposed upon the Clerk offending against either of the above prohibitions. The words of the statute are these:—

Section 30.

Penalty of 50*l.* on non-observance of the two previous enactments

Sect. 30. And be it enacted, that every person who, being the Clerk of any such Court, or the partner of such Clerk, or a person in the service or employment of any such Clerk or of his partner, shall accept the office of Treasurer or High Bailiff of such Court, or who, being the Treasurer of any such Court, or the partner of any such Treasurer, or a person in the service or employment of any such Treasurer or of his partner, shall accept the office of Clerk or High Bailiff in the execution of this Act, or who being the High Bailiff of such Court, or the partner of

any such High Bailiff, or a person in the service or employment of any such High Bailiff or of his partner, shall accept the office of Clerk or Treasurer in the execution of this Act, and also every Clerk, Treasurer, High Bailiff, or other officer of any such Court who shall be, by himself or his partner, or in any way, directly or indirectly, concerned as attorney or agent for any party in any proceeding in the said Court, shall for every such offence forfeit and pay the sum of fifty pounds to any person who shall sue for the same in any of Her Majesty's Superior Courts of Record, by action of debt or on the case.

85. *Clerk must reside within the district, &c.*—Sect. 3 of 13 & 14 Vict. c. 61, provides "that every Clerk and assistant Clerk appointed after the passing of this Act, viz., 13 & 14 Vict. c. 61, to any of such Courts, shall reside within the district of the Court or Courts for which he shall have been appointed, or within five miles of the place where such Court is holden."

Removal of Clerk.

86. *Removal of Clerks.*—The power to remove the Clerk was, by sect. 24 of 9 & 10 Vict. c. 95, vested in the Judge, subject to the approval of the Lord Chancellor, and that power could only be exercised "in case of inability or misbehaviour." But that enactment is now repealed by sect. 4 of 13 & 14 Vict. c. 61, which enacts—

13 & 14 Vict. c. 61, s. 4.

Sect. 4. And be it enacted, that so much of the said Act of the tenth year of Her Majesty as relates to the removal of Clerks or High Bailiffs of the Courts holden under the said Act shall be repealed; and it shall be lawful for the Lord Chancellor, or where the whole of the district of the Court or Courts for which the Clerk or High Bailiff shall have been appointed is within the Duchy of Lancaster, for the Chancellor of the Duchy of Lancaster, when such Lord Chancellor or Chancellor of the Duchy shall in his discretion think fit, to remove the Clerk, High Bailiff, or any assistant clerk of any such Court or Courts from his office, and from time to time to make such order as to the attendance of any Clerk, Deputy Clerk, or Assistant Clerk, during the sitting of the Court or otherwise, as he shall think fit: provided always, that nothing herein con-

tained shall affect the tenure of office of any person who before the passing of the said Act held an office in any of the Courts mentioned in the schedule (A.) annexed to the said Act.

This enactment takes away altogether the power of County Court Judges to remove their Clerks and assistant Clerks, and it gives the Chancellor a power of removing any Clerk or High Bailiff at his discretion. It thereby converts a freehold office into an office held at the will of the Chancellor for the time being. This enactment applies generally to the officers already appointed as well as to such as will be appointed in future, and the only exceptions are such as had, before the passing of the 9 & 10 Vict. c. 95, held an office in any of the Courts mentioned in the schedule (A.) annexed to that Act.

This provision was probably suggested by the decision of the Court of Queen's Bench in the case of *Reg.* v. *Owen* (3 C. C. Chron. 169,) in which it appeared that the Clerk of the Court had been removed by the Judge for being in pecuniary difficulties, and which removal had been confirmed by the Lord Chancellor. It was held by the Court that there was no power to do so for such a cause, the statute limiting the liability to removal to cases of "inability or misbehaviour," and that insolvency was not misbehaviour, and did not necessarily produce inability. Lord CAMPBELL said—

Now, the jury find that there was ability, for they find that the relator discharged the duties of his office until he was removed, and that, though the judge dismissed him for inability, his only inability was great pecuniary embarrassment, and want of money to pay his debts, which did not affect his mind, or hinder him from the discharge of his official duties. If, hereafter, this state of pecuniary embarrassment should affect his mind, or hinder him from performing his duties, there may be, either upon the score of inability or of misbehaviour, a ground for dismissing him. Great pecuniary difficulty may exist with great official ability; for we know that when William Pitt, the younger, was making his country the admiration of the whole world, he was under the pressure of those great pecuniary obligations which were afterwards discharged by the grateful country which paid his debts. And Erle, J., said—The judge

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of a County Court may discharge the Clerk in case of inability; but the Clerk has a right to raise the question whether that inability exists, and that question is for a jury to decide. That question has been referred to a jury, and they find that, though the relator was dismissed for inability, no other inability except insolvency could be charged upon him. That seems to me the full effect of the finding. So that there is no actual mental or bodily inability, but circumstances are found to exist, such, that it is very probable that the mind might be affected, harassed, and distracted by them, or the man's principles of common honesty might be endangered. But then these circumstances are merely evidence. The fact of insolvency does not, as a conclusion of law, import the "inability" spoken of in the statute. There may be, and often is, a state of hopeless insolvency, without any fault of the individual, and befalling him in a course of ordinary prudence, and the most complete honesty.

87. *Payment of Clerk.*—Until otherwise directed by Her Majesty, with the advice of her Privy Council, the Clerk is to be paid by fees (section 24), as provided by section 37, which regulates the fees, and will come to be considered hereafter. But it is enacted by section 39, "that it shall be lawful for Her Majesty, with the advice of her Privy Council, to order that" the Clerks and officers of the Courts holden under that Act "shall be paid by salaries instead of fees, or in any manner other than is provided by this Act." And section 40 limits the amount of the salary of a Clerk to 600*l.* per annum with reasonable travelling expenses. This is the section *verbatim*:

Section 40. — Limiting amount of salaries to be paid under this Act.

Sect. 40. And be it enacted, that the greatest salaries to be received in any case by the Judges and Clerks of the Courts holden under this Act shall be twelve hundred pounds by a Judge and six hundred pounds by a Clerk, exclusive of all salaries to his Clerks employed in the business of the Court, and other expenses incidental to his office, unless in the case of any Judge or Clerk of any such Court acting in the same capacity before the passing of this Act in any Court mentioned in the said schedule (A.), whose salaries shall not be limited to any sum less than the average amount of the fees and emoluments of their

But this right to compensation is limited by the next section.

Section 39.

Officers of Courts may be paid by salaries instead of fees.

If Court abolished, no compensation allowed, except in certain cases.

Sect. 39. And be it enacted, that it shall be lawful for Her Majesty, with the advice of her Privy Council, to order that the Judges, Clerks, Bailiffs, and officers of the Courts holden under this Act, or any of them, shall be paid by salaries instead of fees, or in any manner other than is provided by this Act; and if Her Majesty shall be pleased, with the advice aforesaid, to make such order, or to order that any such Court shall be abolished, or that the district for which any such Court is holden shall be consolidated with any other district, or if any Act shall be passed whereby it shall be provided that the said Courts or any of them shall be abolished, or otherwise constituted than is provided by this Act, no such Clerk or Bailiff, nor any Judge, County Clerk, Treasurer, or other officer of any such Court, shall be entitled to any compensation on account of ceasing to hold his office, or to receive the fees allowed by this Act, or on account of his emoluments being affected by such abolition or alteration, unless he shall have presided or acted as Judge, Assessor, County Clerk, Treasurer, Clerk, Bailiff, or other officer, before the passing of this Act, in any of the Courts mentioned in the schedule (A.) to this Act annexed, in which case he shall be entitled to compensation for the loss of his fees or emoluments, in like manner and subject to the same regulations as he would have been entitled thereto under the provisions herein contained in case he had been deprived of any fees or emoluments by reason of the passing of this Act; and in such case all sums payable in the name of fees to such officers of the Court as shall be paid by salaries shall be paid from time to time to the Treasurer of the Court, who shall pay the said several salaries out of the proceeds of such fees, and the surplus shall form part of the general fund of the Court; and whenever the net amount of the fees shall not be sufficient to pay the said several salaries, the deficiency shall be made good and paid out of the Consolidated Fund of Great Britain and Ireland.

89. *Security to be given by Clerks.*—The Clerk, in common with other officers receiving any moneys in the execution of his duty, is to give such securities as shall be required by the Treasury for the due per-

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formance of his office, and for the due accounting for and payment of moneys so received by him by virtue of his office, or which he may become liable to pay for any misbehaviour in his office. The section is as follows:

Section 36. — Treasurers, Clerks, and High Bailiffs to give security.

Sect. 36. And be it enacted, that the Treasurer, Clerk, and High Bailiff of every Court holden under this Act who may receive any moneys in the execution of his duty shall give security, for such sum and in such manner and form as the Commissioners of Her Majesty's Treasury from time to time shall order, for the due performance of their several offices, and for the due accounting for and payment of all moneys received by them under this Act, (or which they may become liable to pay for any misbehaviour in their office.)

Appointment of Assistant Clerks.

90. *Assistant Clerks may be appointed.*—Sect. 24 provides for the appointment of Assistant Clerks, in these words: "And in cases requiring the same, such Assistant Clerks as may be necessary shall be provided and paid by the Clerk of the Court." It is to be observed, that while the statute expressly requires that the Clerk shall be an attorney-at-law, no such qualification is required for an Assistant Clerk, which would appear to indicate that the Legislature contemplated in an Assistant Clerk strictly that which its name implies, an *assistant,* and not a *substitute.* This is strengthened by the following section, the 25th, which empowers the Lord Chancellor to appoint *two* Clerks in populous districts, which would not be necessary if Assistant Clerks had been intended to be persons of the same *status* as the Clerks; and yet a further argument is the provision made by the 26th section for the appointment of a Deputy Clerk, in case of illness, which also would have been needless if it had been intended that the Assistant Clerk should be that which in many instances he has been made.

Payment of Assistant Clerks.

91. *Payment of the Assistant-Clerk.*—The Assistant Clerk is to be paid by the Clerk, out of his own pocket, and at his discretion. (Sect. 24.)

Their duties.

92. *Duties of Assistant Clerk.*—The duties of the

Assistant Clerk are the same as those of the Clerk. It is also directed as follows, by

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Inst. 43.

Duties of Clerk may be done by Assistant Clerk.

Inst. 43. All matters or things required to be done by the Clerk of the Court may be done by the Clerk of the Court, or by the Assistant Clerk, or Clerk provided by him.

93. *Clerk to provide an Office.*—The Clerk is to provide an office at each place where his Court is held, and which is to be open daily from ten o'clock in the morning until four in the afternoon. This is provided by

Inst. 42.

Clerk's office

Inst. 42. The Clerk of every Court shall have an office at each place where the Court of which he is Clerk is held.

Inst. 44.

Hours of business.

Inst. 44. The office of the Clerk shall be open daily, and the office hours shall be from ten o'clock in the morning until four in the afternoon.

94. *Duties of the Clerk.*—The duties of the Clerk (and Assistant Clerk) are numerous and important. They are partly set forth in section 27.

Section 27.

Duties of Clerks.

Sect. 27. And be it enacted, that the Clerk of each Court, with such Assistant Clerks as aforesaid in cases requiring the same, shall issue all summonses, warrants, precepts, and writs of execution, and register all orders and judgments of the said Court, and keep an account of all proceedings of the Court, and shall take charge of and keep an account of all Court fees and fines payable or paid into Court, and of all moneys paid into and out of Court, and shall enter an account of all such fees, fines, and moneys in a book belonging to the Court, to be kept by him for that purpose, and shall from time to time, at such times as shall be directed by order of the Court, submit his accounts to be audited or settled by the Treasurer.

But, for their more convenient consideration, we propose to classify them under distinct heads and review them *seriatim*. He is

Duties of Clerk.

1. To issue all processes of the Court. (Sect. 27.)
2. To register all orders and judgments. (Sects. 27 and 111.)
3. To keep an account of its proceedings. (Sect. 27.)



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4. To tax costs. (Inst. 36.)
5. To receive and keep an account of all Court fees and fines payable or paid into Court, and of all moneys paid into or out of Court, and to enter an account of all such fees, fines, and moneys so received and paid, in a book belonging to the Court to be kept by him for that purpose. (Sect. 27.)
6. To submit his accounts to be audited and settled by the Treasurer. (Sects. 27, 41, and 42.)
7. To send to the Commissioners of Audit an account of all sums paid by him to the Treasurer. (Sect. 46.)
8. To have the care of the court-house and offices of the Court. (Sect. 55.)
9. To appoint and dismiss the necessary servants for taking charge of the court-house and offices. (Sect. 55.)
10. Under the direction of the Commissioners of the Treasury, and subject to such regulations as they may require to be enforced, to make all necessary contracts, or provide for repairing, furnishing, cleaning, lighting, and warming the court-house and offices, for supplying them with Law and office books and stationery, and for defraying other necessary expenses not otherwise provided for. (Sect. 55.)

1. Duty of Clerk to issue processes.

95. 1st. *Clerk to issue all Processes of the Court.*—The 27th section enacts, "that the Clerk of each Court, with such Assistant Clerks as aforesaid, in cases requiring the same, shall issue all summonses, warrants, precepts, and writs of execution."

And it is directed by the 51st instruction that where forms of proceedings are not prescribed by the schedule, the Clerk shall frame the necessary process, using, when practicable, the forms prescribed *as guides* in framing them. It will therefore be prudent for the Clerks carefully to observe this instruction and, preserving the words of the forms in the schedule used for simple processes, so far as they are applicable, merely to alter such portions or make such additions as may be necessary to meet the particular object, and even in this to use the same language as may have been employed to express the same thing in other forms, or in the instructions, or statute, it being of great importance in all legal documents that the

same *meaning* should be conveyed to every mind, which cannot well be unless the same *words* are employed to express it. This is

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Rule 51. In case of proceedings not provided for by the forms in the schedules, the Clerk of the Court shall issue the necessary process, using, where practicable, the forms prescribed in the schedule, as guides in framing the same.

Clerk to frame forms of processes, &c.

A summary of the processes which the Clerk is directed by the statute and the instructions to issue may be useful to the reader for ready reference here, although each will be treated of fully hereafter, when we come to "the Practice of the County Courts." We append to each the section or instruction in which it is to be found.

1. To enter plaint and issue summons. (Sect. 59.)
2. To give plaintiff a note of plaint entered. (Rule 3.)
3. To annex particulars of demand to summons. (Rule 4.)
4. To file copy of summons served. (Rule 13.)
5. To give notice to the other party of demand of a jury. (Sect. 70.)
6. To make jury list. (Sect. 72.)
7. To give notice to plaintiff of special defence. (Sect. 76.)
8. To give to plaintiff notice of set-off. (Rule 18.)
9. To give notice to plaintiff of payment of money into Court. (Sect. 82.)
10. To issue summonses to witnesses. (Sect. 85.)
11. To affix in his office list of summonses served. (Rule 46.)
12. To issue orders of commitment. (Sect. 102.)
13. To issue warrants of execution (sect. 104), and endorse thereon the sum of money and costs adjudged. (Sect. 109.)
14. On payment of debt and costs by defendant in execution to grant certificate of discharge. (Sect. 110.)
15. To approve sureties in replevin. (Sect. 121.)
16. To approve sureties on staying execution of a warrant of possession. (Sect. 126.)

96. 2nd. *To register Orders and Judgments.*—The 27th section directs that "the Clerk of each Court,

2. Duty of Clerk to register

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with such assistant Clerks as aforesaid, in cases requiring the same, shall register all orders and judgments of the said Court." This is done in a book, the form of which is given in the next section as "the Minute Book."

3. Duty of Clerk to keep an account of proceedings.

97. 3rd. *To keep Account of Proceedings of the Court.*—The 27th section directs, also, that the Clerk shall "keep an account of all proceedings of the Court." For this purpose it is usual to enter them in a rough minute book, from which they are copied fairly into the minute book; and by section 111 he is further required not only to preserve such a note of all the proceedings of the Court, but fairly to enter them from time to time in a book belonging to the Court, which shall be kept at the office of the Court.

Two instructions, namely, the 40th and 41st, relate to this subject. They direct the Clerk to keep his books according to the form prescribed, and to prefix to each entry the number of the plaint to which it appertains. They are as follow:

Rules 40 & 41. — As to keeping books.

Rule 40. The Clerk of every Court shall keep the several books, and in the form in the schedules.

Rule 41. Every entry in such books shall have a number prefixed, corresponding with the number of the plaint to which it refers.

The form of this book is given on the next page.

It is no part of the duties of the Clerk to fit up the Court-house; therefore, where the Clerk gave orders for the fitting-up of the Court-house, he was held personally liable: (*Autey* v. *Hutchinson,* 1 Cox & Mac. 189.)

Book II. THE OFFICERS. Cap. 3. The Clerk. Minute Book.

No. II.—MINUTE BOOK

County Court of at

Minutes of Judgments, Orders, and other Proceedings at a Court held at in the County of on the day of 1848, before Esq., Judge of the said Court.

No.	Plaintiff.	Appearance.	Defendant.	Appearance.	Particulars of Claim.	Amount claimed. £ s. d.	Special Defence.	By whom Jury required.	For whom Judgment given.	Amount of Judgment. £ s. d.	Costs.	Order.
1	J. Smith	In person	T. Jones..	By wife	Goods sold and delivered	2 10 0	Set-off.	.. ..	Plaintiff.	2 10 0		By instalments of one pound.
2	R. Sly..	By attorney	G. Taylor.	Default, service proved	Assault	20 0 0	.. ..	.. ..	Plaintiff.	20 0 0		Costs of Attorney to be allowed.
3	T. Noble	Default	R. Jackson	.. ..	Promissory note	13 14 6	Bankruptcy.	.. ..	.. ..	.. ..		Struck out.
4	A. B. ..	By agent	C. D.	Default, service proved	Trespass......	15 0 0	.. ..	Defendant.	Plaintiff.	10 0 0		Immediate execution. Two witnesses two miles each, to be allowed.
5	E. F. ..	In person	G. H. executor of J. K. deceased	By agent	Goods sold....	7 10 0	Set-off.	.. ..	Plaintiff.	7 10 0		To be levied on the testator's goods in defendant's hands [*or on assets when they shall accrue.*]

[Each page of this book to be signed by the Clerk.]

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Copy of register to be evidence.

98. *Copy of Register to be Evidence.*—By the same section (111) it is also provided that " such entries in the said book, or a *copy thereof bearing the seal of the Court, and purporting to be signed* and certified as a true copy by the *Clerk of the Court*, shall at all times be admitted in all Courts and places whatsoever as evidence of such entries and of the regularity of such proceeding, without further proof. The following is the form of such copy :

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Certified Copy of Register.

CERTIFIED COPY OF REGISTER.

County Court of at

Minute of Judgments, Orders, and other Proceedings at a Court held at in the County of on the day of 1848, before Esq., Judge of the said Court.

No.	Plaintiff.	Appearance.	Defendant.	Appearance.	Particulars of Claim.	Amount claimed.	Special Defence.	By whom Jury required.	For whom Judgment given.	Amount of Judgment.	Costs.	Order.
						£ s. d.				£ s. d.	£ s. d.	
4	A. B...	By agent	C. D.......	Default, service proved.	Trespass..	15 0 0	....	Defendant.	Plaintiff.	10 0 0	....	Immediate execution. Two witnesses two miles each, to be allowed.

I certify that the above is a true Copy of an entry in the Minute Book of the County Court of at

Dated this day of 1848.

Clerk of the said Court.

Book II. THE OFFICERS. — Cap. 3. The Clerk. — Section 111. — Minutes of proceedings to be kept.

This is the section:

Sect. 111. And be it enacted, that the Clerk of every Court holden under this Act shall cause a note of all plaints and summonses, and of all orders, and of all judgments and executions, and returns thereto, and of all fines, and of all other proceedings of the Court, to be fairly entered from time to time in a book belonging to the Court, which shall be kept at the office of the Court; and such entries in the said book, or a copy thereof bearing the seal of the Court, and purporting to be signed and certified as a true copy by the Clerk of the Court, shall at all times be admitted in all Courts and places whatsoever as evidence of such entries, and of the proceeding referred to by such entry or entries, and of the regularity of such proceeding, without any further proof.

4. Duty of Clerk to tax costs.

99. 4th. *To tax Costs.*—This is directed by the 36th rule, which is as follows:

Rule 36.

Rule 36. All costs shall be taxed by the Clerk of the Court.

The law and practice of taxation will be treated of in its proper place.

5. Duty of Clerk to receive and keep account of fees and moneys.

100. 5th. *To receive and keep Account of Fees and Moneys.*—The 27th section also directs "that the Clerk of each Court, with such Assistant Clerks as aforesaid, in cases requiring the same, shall take charge of and keep an account of all Court fees and fines payable or paid into Court, and of all moneys paid into or out of Court, and shall enter an account of all such fees, fines, and moneys in a book belonging to the Court, to be kept by him for that purpose."

The form of the fee book is prescribed by the instructions, and is as follows:—

No. VI.—FEE BOOK.

County Court of at Court held day of 1848.

				Judge's Fees.							Clerk's Fees.																Bailiff's Fees.							
No. of Plaint.	Plaintiff.	Defendant.	Amount of Debt or Damages *claimed.*	Summons.	Hearing without Jury.	Hearing with Jury.	Judgment.	Application.	Order.	Total of Judge's Fees.	Entering Plaint and Issuing Summons.	Entering and giving Notice of Special Defence.	Subpœna.	Withdrawal of Cause.	Swearing Witnesses.	Hearing without Jury.	Notice of Jury.	Summons of Jury.	Swearing Jury.	Hearing with Jury.	Adjournment.	Entering and drawing up every Judgment, Order, and Copy thereof.	Recognizance for Costs.	Inquiries as to Sureties, and taking Bond.	Taxing Costs.	Total of Clerk's Fees.	Calling Cause.	Affidavit of Service out of District.	Service of Summons, Order, or Subpœna.	Total Bailiff's Fees.	Paid to Jurors.	Total of Fees.	General Fund.	Minute of Judgment and Order.

Note.—As money may be paid into and out of Court, and executions issue and be superseded, and searches be made in cases which appear in Fee book, after having been audited by the Treasurer, the fees thereon cannot be included in the Fee book, but can always be ascertained by referring to the Cash and Execution books.

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6. Duty of Clerk to submit accounts to Treasurer.

101. 6th. *To submit Accounts to Treasurer.*—The 27th section also directs that the Clerk "shall from time to time, at such times as shall be directed by order of the Court, submit his accounts to be audited or settled by the Treasurer." And sections 41 and 42 direct the fees and fines to be accounted for to the Treasurer, and the Treasurer to audit such account.

Section 41. — Fees and fines to be accounted for to Treasurer.

Sect. 41. And be it enacted, that the Clerk of every Court holden under this Act, from time to time as often as he shall be required so to do by the Treasurer or Judge of the Court, and in such form as the Treasurer or Judge shall require, shall deliver to the Treasurer a full account in writing of the fees received in that Court under the authority of this Act, and a like account of all fines levied by the Court, and of the expenses of levying the same, and shall pay over to the Treasurer, quarterly or oftener in every year, by order of the Court, the moneys remaining in his hands over and above his own fees, and such balance as he shall be allowed by order of the Court to retain for the current expenditure of the Court.

So much of this Act as relates to the payment to the Treasurer is repealed by 12 & 13 Vict. c. 101. The Clerk is to pay the balances as the Treasury may direct.

Section 42. — Clerk's accounts to be audited and settled by Treasurers

Sect. 42. And be it enacted, that the Treasurer of every Court holden under this Act shall from time to time, quarterly or oftener, as shall be directed by order of the Court, audit and settle the accounts of the Clerk and other officers of the Court, and shall receive the balance of the various moneys which such Clerk and other officers shall have received under this Act, and shall pay over to the Judge of the Court the amount of his fees, and make all such other payments as it shall be requisite to make thereout in accordance with the provisions of this Act, and shall from time to time pay the balance remaining on his hands, or so much thereof as he shall be directed to pay, into such bank, or otherwise as shall be directed by the Commissioners of Her Majesty's Treasury.

Instructions of the Treasury.

A series of *Instructions issued by the Lords Commissioners of Her Majesty's Treasury to the Treasurers of County Courts, under the Act of this 9 & 10 Vict. c.* 95, dated June, 1847, contains some very minute directions as to the manner in which the Clerks shall carry out this provision of the statute, and prescribes the forms in which the accounts shall be framed. The accounts are to be transmitted to the Treasurer

monthly, and at the same time the moneys so received for fees are to be paid over to the Treasurer, and also so much of the suitors' fund then in his hands as the Treasurer may require. The Treasurer is to audit these accounts quarterly, or oftener if he deems it necessary, and at the termination of each audit *all* the balance in the Clerk's hands, whether in fees or suitors' fund, is to be paid over to the Treasurer, excepting only the Clerk's own fees. The following are the instructions to this effect:

Inst. 1.

Clerk to transmit to Treasurer monthly account according to Form A.

INST. 1. The Treasurer will require the Clerk of every Court to transmit to him immediately after the termination of each month, an account showing the amount of fees received under the authority of the Act, during the month, distinguishing the Judge's fees, the Clerk's fees, the High Bailiff's fees, and the general fund fees, together with an account of all fines levied within the month, and the expenses of levying the same, and likewise an account of the suitors' money, and the balance remaining in the hands of the Clerk at the termination of the said month; such accounts to be made out according to the form marked A. And the Clerk of every Court is, at the same time, to pay over to the Treasurer the amount of the Judge's fees, and of the general fund fees, and also such portion of the suitors' fund then in his hands as the Treasurer shall require.

The form is as follows:—

Book II. The Officers. Cap. 3. The Clerk. Form A. Monthly Account.

(A.)

FORM OF MONTHLY ACCOUNT.

Account rendered by the Clerk of the County Court at of the Fees received in the said Court in the month of 184 , under the following heads:—

Date of Court.	Number of Plaints.	Judge's Fees.			Clerk's Fees.			Bailiff's Fees.			Total Fees.			General Fund.		
		£	s.	d.	£	s.	d.	£	s.	d.	£	s	d.	£	s.	d.
Total.. £																

FINES LEVIED.	Amount of Fines levied.			Expenses of levying.		
	£	s.	d.	£	s.	d.
Total........ £						

EXECUTION FEES. Folio of Execution Book	Clerk's Fees.			Bailiff's Fees.		
	£	s.	d	£	s	d.
Total..£						

SUITORS' MONEY.

	£	s.	d.	£	s.	d.
Balance from last Month						
Paid in during the Month of						
Paid out during the Month of						
Paid over to Treasurer ditto						
Balance in Clerk's hands .... £						

CLERK'S FEES.

	£	s.	d.
Dr. Side Paying in......			
Searches			
Certificates			
Cr. Side Paying out			
Total .... £			

Clerk of the Court.

102. *Treasurer to audit Clerk's Accounts.*—The accounts thus sent are to be audited quarterly, immediately after each quarter-day, or oftener if the Treasurer should deem it desirable. And at the termination of such audit, the Clerk is to pay over to the Treasurer all moneys remaining in his hands. This is the instruction :

Inst. 2. — Treasurer to audit Clerk's accounts quarterly.

INST. 2. The Treasurer will audit the accounts of the Clerk quarterly, namely, immediately after the 31st March, the 30th June, the 30th September, and the 31st December, in each year, or oftener in the large court-towns, if he shall deem it necessary. And at the termination of such audit the Treasurer shall receive from the Clerk the balance of the suitors' money, and all other moneys remaining in his hands, except his (the Clerk's) own fees. And the Treasurer will not remove the books of the Clerk from the court-town, so as to create any delay or inconvenience to the business of the Court.

Inst. 3. — To examine all the books.

INST. 3. The Treasurer, in auditing the Clerk's accounts, will duly examine the various books kept by the Clerk, so as to satisfy himself of the correctness of the accounts by comparing the entries in the several books to such an extent as he may consider necessary for that purpose.

103. *How the Books are to be kept by Clerk.*—The Clerks are also required to pursue a prescribed course in the manner of keeping their books, as follows :

Inst. 5. — Form in which Clerk is to keep his accounts.

Inst. 5. And to enable the Treasurer to examine the accounts with greater facility, he will require the Clerk at each court-town to pursue the following course in his several books, namely :

Execution Book.—Each page to be separately added up, and a summary of the same made at the end of each month, showing the amount of the Clerk's fees and Bailiff's fees.

Cash Book.—The debit and credit side of each page to be added up, and carried forward from page to page to the end of each month, showing the amount of suitors' cash paid in and paid out, together with the amount of fees for paying in and out, for searches, and for certificates.

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Fee Book.—Each page to be added up, showing the number of plaints, the total of the Judge's fees, of the Clerk's fees, of the Bailiff's fees, and of the general fund fees, and likewise the total of the whole of the fees. The totals of each of the fees must not be carried on from page to page, but a summary of such totals must be made at the termination of each Court, on a vacant space in the book next following the last entries.

104. *Clerk's Annual Balance-sheet.*—Once a year the Clerk is to furnish a general balance-sheet in a prescribed form, marked B. in the schedule attached to the instructions.

Inst. 7.

Clerk to furnish annual balance-sheet according to Form B.

INST. 7. The Treasurer will obtain from the Clerk, once in every year, and the Clerk is hereby required to furnish the same, a balance-sheet of the Clerk's ledger, made out according to the Form marked B.; and the Treasurer will afterwards check the balance-sheet in such way as he may deem necessary, so as to satisfy himself that the receipts have been duly entered and accounted for in the cash-book, and posted into the ledger; but this duty need not be performed by the Treasurer at any specified period of the year, or simultaneously in all the Courts, but may be done at any convenient time, so that the duty is performed at least once in every year.

The following is the form thus prescribed :

Form B.

Balance-sheet.

FORM B.—(See Instruction No. 7.)

County Court at

BALANCE SHEET,—LEDGER.

Showing the Balance on each Case on the day of 184 .

No. of Plaint.	Ledger Folio.	Balance of each Case.			No. of Plaint.	Ledger Folio.	Balance of each Case.		
		£	s.	d.			£	s.	d.
					Brought forward				
Carried forward £						Total £			

105. *Clerk's Disbursements to be allowed by Treasurer.*—The 6th instruction directs the Treasurer to allow in the Clerk's accounts all disbursements which he shall have made in pursuance of the provisions of the 55th section, on his producing proper vouchers, as follows:

Inst. 6. — Clerk's disbursements to be allowed.

Inst. 6. The Treasurer will, at the time of the audit, allow in the Clerk's accounts, out of the general fund account, all such disbursements as shall have been made or incurred for servants, repairs of court and offices, books, stationery, and all other necessary expenses, provided the same shall have been sanctioned in the manner required by the 55th section of the Act, and proper vouchers are produced.

For the list of books, &c. that have been sanctioned by the Treasury as proper to be supplied to the Courts and officers, see *ante*, p. 57.

106. *Omission or Neglect by Clerk.*—Should the Clerk fail in observing these directions, the Treasurer is instructed immediately to report him to the Treasury.

Inst. 14. — Treasurer to report neglect to the Treasury.

Inst. 14. Should any of the Clerks neglect or refuse to comply with the directions of the Treasurer in regard to any of these instructions, it will be the duty of the Treasurer immediately to report the same to the Lords Commissioners of Her Majesty's Treasury.

107. *Stamped Receipts to be given and required.*—Stamped receipts are required on all vouchers, except for the payment of the Judge's fees, and the suitors' money paid to the Clerks, for which the written acknowledgment of the Judge and Clerk respectively on unstamped paper is to be a sufficient voucher; if the party giving the receipt cannot write, his mark must be attested by a competent witness; and where the payment is not made to the party apparently entitled, a power of attorney or other legal document, authorizing the payment in question, is to be furnished. It is therefore incumbent upon the Clerks to be extremely careful to take stamped receipts for all payments they may make. The following are the instructions:

Inst. 17. — Stamped

Inst. 17. The Treasurer, in making all payments and disbursements, should require receipts; and where the sum

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amounts to 5*l.* and upwards, such receipt should be written on properly stamped paper; except in the payment of the Judge's fees, and suitors' money paid to the Clerks, for which the written acknowledgment of the Judge and Clerk respectively on unstamped paper will be a sufficient voucher; and in cases where the party is unable to write, his mark will require a competent witness.

Inst. 18. — Power of attorney to be required.

Inst. 18. In cases where the payment is not made to the party apparently entitled, a power of attorney or other legal document authorizing the payment in question should be furnished.

7. Duty of Clerk to send accounts to Commissioners of Audit.

108. 7th. *To send Accounts to Commissioners of Audit.*—The 46th section directs the Clerk once in every year, or oftener if required, on a day to be appointed by the Treasury, to send to the Commissioners of Audit an account of all sums paid over by him to the Treasurer of his Court, including all unclaimed balances carried to the account of the general fund.

Section 46. — Clerk to send to Commissioners of Audit an account of all sums paid by him to Treasurer.

Sect. 46. And be it enacted, that the Clerk of every such Court shall once in every year, and oftener if required, on such day as shall be appointed by the Commissioners of Her Majesty's Treasury, make out and send to the said Commissioners of Audit an account of all sums paid over by him to the Treasurer of the Court, including all unclaimed balances carried to the account of the general fund, as hereinafter provided; and every such account, duly vouched by receipts given under the hand of the Treasurer, shall be a voucher to charge the Treasurer in his account before the said Commissioners of Audit.

109. 8th. *To take Charge of Court-house and Offices.*—It is provided by sect. 55, "that the Clerk of every Court shall have the care of the court-house and offices of the Court."

9. Clerk to appoint servants.

110. 9th. *To appoint and dismiss Servants.*—The same section also enacts, that he "shall appoint and have power to dismiss the necessary servants for taking charge of such court-house and offices, at

such salaries as shall be from time to time authorized by the Judge, with the consent of the Commissioners of Her Majesty's Treasury." (Sect. 55.) Book II. THE OFFICERS. Cap. 3 The Clerk.

111. 10th. *Contract for furnishing the Courts.*—By the first County Courts Act the Clerk was to contract for furnishing the offices. This was repealed by 12 & 13 Vict. c. 101, s. 8, and the Treasury is empowered to do so. Thus:

Sect. 8. And be it enacted, that so much of the said Act of the tenth year of Her Majesty as enacts that the Clerk of every Court, under the directions of the Commissioners of Her Majesty's Treasury, and subject to such regulations as they may require to be enforced, shall make all necessary contracts or otherwise provide for repairing and furnishing, and for cleaning, lighting, and warming, the court-house and offices of such Court, and for supplying the said Court and offices with law and office books and stationery, and for defraying all other necessary expenses not otherwise provided for incident to the holding of the said Court, and as provides that no payment for any charge shall be allowed in the Clerk's Accounts until allowed under the hand of the Judge, shall be repealed; and it shall be lawful for the Commissioners of Her Majesty's Treasury to provide for the several purposes and for defraying the several expenses aforesaid in such manner, and by the agency of such officers of the Court, or otherwise, as to them shall seem fit. 12 & 13 Vict. c. 101, s. 8.

112. *Clerk not to be interested in any such Contract.*—The section thus partially repealed contains the following proviso: "Provided always, that the Treasurer or Clerk of any Court, or the partner of any such Treasurer or Clerk, shall not be directly or indirectly concerned or interested in any such contract, or in supplying any articles for the use of the said Courts and offices." (Sect. 55.) Clerk or treasurer not to be interested in contracts.

113. *Accounts must be sanctioned by the Judge.*—The same section also contains a proviso, "that no payment for any such charge shall be allowed in the Clerk's accounts until allowed under the hand of the Judge." (Sect. 55.)

114. *Section* 55.—As the section is an important one, it will be desirable to give it entire. It is as follows:

Sect. 55. And be it enacted, that the Clerk of every Court shall have the care of the court-house and offices of the Court, and shall appoint and have power to dismiss the necessary ser- *Section* 55. Clerks to

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have the charge of the court-houses, &c. and to appoint and dismiss servants, &c.

vants for taking charge of such court-house and offices, at such salaries as shall be from time to time authorized by the Judge, with the consent of the Commissioners of Her Majesty's Treasury; and the Clerk of the Court, under the direction of the said Commissioners, and subject to such regulations as they may require to be enforced, shall make all necessary contracts or otherwise provide for repairing and furnishing, and for cleaning, lighting, and warming, the said court-house and offices, and for supplying the said Court and offices with law and office books and stationery, and for defraying all other necessary expenses not otherwise provided for incident to the holding of the said Court, and the charge of the court-house and offices, and expenses thereby incurred, shall be paid out of the general fund of the Court: provided always, that the Treasurer or Clerk of any Court, or the partner of any such Treasurer or Clerk, or any person in the service or employment of any such Treasurer or Clerk, shall not be directly or indirectly concerned or interested in any such contract, or in supplying any articles for the use of the said Courts and offices: provided also, that no payment for any such charge shall be allowed in the Clerk's accounts until allowed under the hand of the Judge.

Duties of Clerk.

The duties of the Clerk are thus strictly defined: He has *absolute* control over the appointment and dismissal of servants for taking charge of the court-house and offices.

But he must contract for furniture, repairs, and the supply of books and stationery, subject to the regulations (if any) of the Treasury, and the charges must be sanctioned by the Judge, and neither himself, nor his partner, nor any person in his employ, is to be directly or indirectly interested in any such contract, or in supplying any articles for the use of the Courts and offices.

Penalty for misconduct.

115. *Penalty for Extortion or Misconduct*,—It is enacted by sect. 116, that if any Clerk "acting under colour or pretence of the process of the said Court, shall be charged with extortion or misconduct, or with not duly paying or accounting for any money levied by him under the authority of this Act, it shall be lawful for the Judge to inquire into such matter in a summary way," &c. &c. "and to make such order thereupon for the repayment of any money extorted, or for the due payment of any money so levied as aforesaid, and for the payment of such damages and costs as he shall think just; and also, if he shall

think fit, to impose such fine upon the Clerk, Bailiff, or officers, not exceeding ten pounds for each offence, as he shall deem adequate." (Sect. 116.)

Penalty for taking fees other than as allowed.

116. *Penalty for taking Fees other than as allowed.*—And it is enacted by sect. 117, "that every Treasurer, Clerk, Bailiff or other officer employed in putting this Act, or any of the powers thereof, in execution, who shall *wilfully and corruptly* exact, take, or accept any fee or reward whatsoever, other than except such fees as are or shall be appointed and allowed respectively as aforesaid, for or on account of anything done or to be done by virtue of this Act, or on any account whatsoever relative to putting this Act into execution, shall, upon proof thereof before the said Court, and in the case of a Clerk, Treasurer, or High Bailiff, on allowance of the finding of the Court by the Lord Chancellor, be for ever incapable of serving or being employed under this Act in any office of profit or emolument, and shall also be liable for damages as herein provided." (Sect. 117.)

Protection against vexatious actions.

117. *Protection against vexatious Actions.*—The Clerks, as well as the other officers, are protected against vexatious actions for any grievance alleged to be committed by them "under colour or pretence of the process of the said Court," by sect. 138, which requires all actions and prosecutions for anything done in pursuance of the Act to be "commenced within *three* calendar months after the fact committed, and not afterwards or otherwise;" one month's notice in writing to be given to the defendant; and further provides that plaintiff should not recover if tender of sufficient amends shall have been made before action brought, or if after action brought a sufficient sum of money shall have been paid into Court with costs. (Sect. 138.) And the following section further enacts, that "if any person shall bring any suit in any of Her Majesty's Superior Courts of Record in respect of any grievance committed by any Clerk, Bailiff, or officer of any Court holden under this Act, under colour or pretence of the process of the said Court, and the jury upon the trial of the action shall not find greater damages for the plaintiff than the sum of 20*l.*, no costs shall be awarded to the plaintiff in such action unless the Judge shall certify in Court upon the back of the record that the

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action was fit to be brought in such Superior Court." For further particulars as to these provisions for the protection of officers, the reader is requested to turn to the chapter relating to the officers generally, where they will be found at length.

117. *Clerk to be joined in actions against High Bailiffs.*—The 19th section of the new statute, 13 & 14 Vict. c. 61, has required that the clerk shall be joined in an action against the Bailiff, acting in pursuance of any warrant under the hand of the Clerk and Seal of the Court. Thus:

13 & 14 Vict. c. 61, s. 19.

Sect. 19. And be it enacted, that from and after the passing of this Act no action shall be brought against any High Bailiff or Bailiff, or against any person or persons acting by the order and in aid of any High Bailiff, for anything done in obedience to any warrant under the hand of the Clerk or Clerks of the said Court and the seal of the said Court, until demand hath been made or left at the office of such High Bailiff by the party or parties intending to bring such action, or by his, her, or their attorney or agent, in writing signed by the party demanding the same, of the perusal and copy of such warrant, and the same hath been refused or neglected by the space of six days after such demand; and in case after such demand, and compliance therewith by showing the said warrant to and permitting a copy to be taken thereof by the party demanding the same, any action shall be brought against such High Bailiff, Bailiff, or other person or persons acting in his aid, for any such cause as aforesaid, without making the Clerk or Clerks of the said Court who signed or sealed the said warrant defendant or defendants, that on producing or proving such warrant at the trial of such action the jury shall give their verdict for the defendant or defendants, notwithstanding any defect of jurisdiction or other irregularity in the said warrant; and if such action be brought jointly against such Clerk or Clerks and also against such High Bailiff or Bailiff, or person or persons acting in his or their aid, as aforesaid, then on proof of such warrant the jury shall find for such High Bailiff or Bailiff, and for such person or persons so acting as aforesaid, notwithstanding such defect or irregularity as aforesaid; and if the verdict shall be given against the said Clerk or Clerks, that in such case the plaintiff or plaintiffs shall recover his, her, or their costs against him or them, to be taxed in such manner by the proper officer as to include such costs as such plaintiff or plaintiffs are liable to pay to such defendant or defendants for whom such verdict shall be found as aforesaid; and if any action shall be brought the defendant or defendants shall and may plead the general issue, and give the special matter in evidence at any trial had thereupon.

CAP. IV.

THE HIGH BAILIFF.

118. *Definition of the Term.*—By the interpretation clause (sect. 142) it is provided that "the word 'Bailiff' in the Act shall be understood to include High Bailiff."

Appointment.

119. *Appointment.*—The appointment of High Bailiff is vested in the Judge by the 31st section, which enacts, "that for every such Court there shall be one or more High Bailiffs, whom the Judge shall be empowered by order of Court to appoint, and, in case of inability or misbehaviour, to remove by a like order." (Sect. 31.)

It will be observed that the appointment of High Bailiff must be made by *Order of Court* and he must be dismissed in like manner. The following is suggested as the form of such an order:

ORDER FOR APPOINTMENT OF HIGH BAILIFF.

Form of appointment of High Bailiff.

In the County Court of at

It is ordered upon the appointment of A. B. Esq., the Judge of this Court, that C. D. of in the county of gentleman, be and he is hereby constituted the High Bailiff of this Court.

Given under the Seal of the Court this day of 184 .

(Seal) *By the Court.*

Clerk.

120. *There may be several High Bailiffs.*—It is also to be observed that the Judge is empowered to appoint more than one High Bailiff to each Court, at his discretion.

121. *Each Court to have its High Bailiff.*—The same question arises here as in the case of the Clerks

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from the confused and contradictory use of the term "Court" in the statute. There is to be a High Bailiff for "every such Court;" but all the Courts in each county are elsewhere treated as one Court, to wit, the County Court of A. holden at B. It may be contended that the appointment should be to the County Court of the whole county, comprising all the Courts, or to the particular Court, and with an almost equal weight of argument. But where one Bailiff is appointed to several Courts it will, perhaps, be the safest course to make a separate appointment to each.

High Bailiffs may appoint Assistant Bailiffs.

122. *Assistant Bailiffs.*—The High Bailiff is by the same section empowered, "subject to the restrictions hereinafter contained," (*i. e.* with the exception of the Courts in schedules (A.) and (B.), under sect. 34, and the two Courts of Bristol under sect. 35, in which the officers of the Courts previously existing are to be the officers when they are converted into County Courts), "by *any writing under his hand* to appoint a sufficient number of able and fit persons, not exceeding such number as shall be from time to time allowed by the Judge, to be Bailiffs, to assist the said High Bailiff, and at his pleasure to dismiss all or any of them, and appoint others in their stead; and every Bailiff so appointed may also be suspended or dismissed by the Judge." (Sect. 31.) Care should be taken that the Assistant Bailiff be appointed *in writing*, as it may become necessary to justify his acts by proof of the appointment.

The following is suggested as the form of

Form of appointment of Assistant Bailiff.

APPOINTMENT OF ASSISTANT BAILIFF BY THE HIGH BAILIFF.

I, A. B. being the High Bailiff of the County Court of at do hereby, with the consent of C. D. Esq., the Judge of the said County Court, appoint E. F. of in the county of labourer, and G. H. of in the county of labourer, to be my Bailiffs to assist me in the execution of my office as High Bailiff of the said County Court.

Signed,

A. B.

High Bailiff.

As the number of Assistant Bailiffs must be allowed by the Judge, his consent should be previously taken in writing. But as the term here used is "the Judge" and not "the Court," such consent will not be an act of the Court, but may be given at any time and place and in any form.

High Bailiffs of Courts in schedules (A.) and (B.)

123. *High Bailiffs of Courts in Schedules (A.) and (B.)*—It is enacted by section 34, "that the persons holding the offices or performing the duties of Clerks and High Bailiffs in any Court holden under any Act cited in either of the said schedules (A.) and (B.), on the 1st day of June in this year, and who shall continue respectively to hold the same offices or to perform the same duties at the time when such Act shall be repealed under the provisions of this Act, whether or not qualified as herein-before provided, shall be entitled, if not disqualified under this Act, to be the first Clerks and High Bailiffs of the same Court when holden as a County Court under this Act, and shall continue to execute their several offices, subject to the power of removal provided in this Act, except that the Clerks and High Bailiffs already appointed to any Court named in the said schedule (A.) shall be removable only for such cause as would have warranted their removal under the Acts according to which their Court is now holden. (Sect. 34.)

124. *High Bailiffs of Westminster and Southwark.*—A special provision is made for these officers by section 32, as follows:

Section 32. — Provision for the High Bailiffs of Westminster and Southwark.

Sect. 32. Provided always, and be it enacted, that, until Parliament shall otherwise direct, the High Bailiff of Westminster shall have the execution of all process issuing out of any of the said Courts the jurisdiction of which shall include the city and liberty of Westminster or any part thereof, and shall be deemed the High Bailiff of such Courts; and the High Bailiff of Southwark shall have the execution of all process issuing out of any of the said Courts the jurisdiction of which shall include the borough of Southwark or any part thereof, and shall be deemed the High Bailiff of such last-mentioned Courts, and no other High Bailiff shall be appointed for such Courts.

Qualification of Bailiff.

125. *Qualification.*—It is to be observed that the statute provides no *qualification* for the office of High Bailiff, or Assistant Bailiff. But there are some

Disqualification of Bailiff.

126. *Disqualifications.*—Section 28 enacts that the High Bailiff shall not be

1. The Clerk of *any* Court held under the Act.
2. The partner of any such Clerk.
3. A person in the service or employ of such Clerk or his partner.
4. The Treasurer of his Court.
5. The partner of the Treasurer.
6. The clerk of the Treasurer.
7. A person in the service or employ of such Treasurer or his partner.

127. *Not to be Clerk or Treasurer of his Court.*—Section 28 forbids "the High Bailiff, his partner, or Clerk, or any person in the service or employment of such High Bailiff or his partner, to act as Clerk or Treasurer of the Court." (Sect. 28.)

128. *Bailiff not to act as Attorney in his Court.*—The 29th section prohibits the High Bailiff from being "directly or indirectly engaged as attorney or agent for any party in any proceeding in the said Court." (Sect. 29.)

129. *Penalty for non-observance.*—A penalty of 50*l.* is, by section 50, imposed upon any person who shall offend the above enactments by accepting the office of High Bailiff, being so disqualified, or who, being a High Bailiff, or partner of, or person in the service or employment of, a High Bailiff, or his partner, shall accept any such prohibited office, or be "concerned as attorney or agent for any party in any proceeding in the said Court;" such penalty to be recovered by any person "who shall sue for the same in any of Her Majesty's Superior Courts of Record, by action of debt, or on the case." (Sect. 30.)

The following are the sections by which these disqualifications are enacted:

Section 28.

Offices of

Sect. 28. And be it enacted, that it shall not be lawful for the Clerk of any Court holden under this Act, or the partner of

any such Clerk, or any person in the service or employment of such Clerk or his partner, to act as Treasurer or High Bailiff of the Court; or for the Treasurer, his partner or Clerk, or any person in the service or employment of such Treasurer or his partner, to act as Clerk or High Bailiff; or for the High Bailiff, his partner or Clerk, or any person in the service or employment of such High Bailiff or his partner, to act as Clerk or Treasurer of the Court. Clerk, Treasurer, and Bailiff not to be conjoined.

Sect. 29. And be it enacted, that no Clerk, Treasurer, High Bailiff, or other officer of the Court shall, either by himself or his partner, be directly or indirectly engaged as attorney or agent for any party in any proceeding in the said Court. Section 29. — Officers not to act as attorneys in the Court.

Sect. 30. And be it enacted, that every person who, being the Clerk of any such Court, or the partner of such Clerk or a person in the service or employment of any such Clerk or of his partner, shall accept the office of Treasurer or High Bailiff of such Court, or who, being the Treasurer of any such Court, or the partner of any such Treasurer, or a person in the service or employment of any such Treasurer or of his partner, shall accept the office of Clerk or High Bailiff in the execution of this Act, or who being the High Bailiff of such Court or the partner of any such High Bailiff, or a person in the service or employment of any such High Bailiff or of his partner, shall accept the office of Clerk or Treasurer in the execution of this Act, and also every Clerk, Treasurer, High Bailiff, or other officer of any such Court who shall be, by himself or his partner, or in any way, directly or indirectly, concerned as attorney or agent for any party in any proceeding in the said Court, shall for every such offence forfeit and pay the sum of 50*l.* to any person who shall sue for the same in any of Her Majesty's Superior Courts of Record, by action of debt or on the case. Section 30. — Penalty of 50*l.* on nonobservance of the two previous enactments.

130. *To give Security.*—The High Bailiffs are required, by section 36, "to give security for such sum, and in such manner and form, as the Commissioners of Her Majesty's Treasury from time to time shall order, for the due performance of their several offices, and for the due accounting for and payment of all moneys received by them under this Act, or which they may become liable to pay for any misbehaviour in their office. (Sect. 36.) High Bailiff to give security.

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131. *Removal of High Bailiff and Assistant Bailiff.* —Previous to the passing of the 13 & 14 Vict. c. 61, the judge might, "in case of inability or misbehaviour" by order of Court, remove the High Bailiff, but by sect. 4 of that act it is provided:

13 & 14 Vict. c. 61, s. 4.

Sect. 4. And be it enacted, that so much of the said Act of the tenth year of Her Majesty as relates to the removal of Clerks or High Bailiffs of the Courts holden under the said Act shall be repealed; and it shall be lawful for the Lord Chancellor, or, where the whole of the district of the Court or Courts for which the Clerk or High Bailiff shall have been appointed is within the Duchy of Lancaster, for the Chancellor of the Duchy of Lancaster, when such Lord Chancellor or Chancellor of the Duchy shall in his discretion think fit, to remove the Clerk, High Bailiff, or any Assistant Clerk of any such Court or Courts from his office, and from time to time to make such order as to the attendance of any Clerk, Deputy Clerk, or Assistant Clerk, during the sitting of the Court or otherwise, as he shall think fit: provided always, that nothing herein contained shall affect the tenure of office of any person who before the passing of the said Act held an office in any of the Courts mentioned in the schedule (A.) annexed to the said Act.

The Assistant Bailiffs may still be removed by the High Bailiff at his pleasure (9 & 10 Vict. c. 95, s. 31.)

132. *Duties of High Bailiffs and Assistant Bailiffs.* —The duties of the Bailiffs are prescribed by section 33, which runs thus:

Section 33. — Duties of the High Bailiffs, &c.

Sect. 33. And be it enacted, that the said High Bailiffs or one of them shall attend every sitting of the Court, for such time as shall be required by the Judge, unless when their absence shall be allowed for reasonable cause by the Judge, and shall, by themselves or by the Bailiffs appointed to assist them as aforesaid, serve all the summonses and orders, and execute all the warrants, precepts, and writs, issued out of the Court; and the said High Bailiffs and Bailiffs shall in the execution of their duties conform to all such general rules as shall be from time to time made for regulating the proceedings of the Court,

as hereinafter provided, and, subject thereunto, to the order and direction of the Judge; and the said High Bailiffs shall be entitled to receive all fees and sums of money allowed by this Act in the name of fees payable to the Bailiff, out of which they shall provide for the execution of the duties for which such fees are allowed, and for the payment of the Bailiffs and officers appointed to assist them, according to such scale of remuneration as shall be from time to time approved by the Judge; and every such High Bailiff shall be responsible for all the acts and defaults of himself, and of the Bailiffs appointed to assist him, in like manner as the sheriff of any county in England is responsible for the acts and defaults of himself and his officers.

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The duties of the High Bailiffs may be thus separately stated:

1. To attend every sitting of the Court for such time as the Judge shall require. (Sect. 33.)

2. To serve, by themselves or their Assistants, all summonses and orders, and to execute all the warrants, precepts, and writs issued out of the Court. (Sect. 33.)

3. At every Court, or at other times, as the Judge shall require, to deliver a statement or return, pursuant to the form in the schedule, of what shall have been done under every process of execution or commitment. (Rule 45.)

4. Eight days before the holding of the Court to deliver to the Clerk a list of summonses served, to be posted in the Clerk's office. (Rule 46.)

5. Forthwith, on the execution of any warrant of execution or commitment issuing out of any other Court, to make a return thereof to such Court, and if the same be not executed within two calendar months from the date thereof, to return the same. (Rule 47.)

6. On levy or receipt of any money by virtue of any process out of his own Court, to pay the same over to the Clerk within three days from the receipt thereof (rule 48), and moneys received by virtue of process from other Courts within the like period to the High Bailiff of such other Court.

133. 1st. *To attend Sittings of Court.* — It is directed, by section 33, "that the said High Bailiffs,

1. To attend sittings of Court.

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or one of them, shall attend every sitting of the Court, for such time as shall be required by the Judge, unless when their absence shall be allowed for reasonable cause by the Judge." (Sect. 33.)

2. To serve processes.

134. 2nd. *To serve Summonses and Orders, and execute Warrants, &c.*—He is also "to serve all the summonses and orders, and execute all the warrants, precepts, and writs issued out of the Court." (Sect. 33.) For these reference must be made to the subsequent sections on the Practice of the Courts.

135. 3rd. *To deliver to Judge Return of Executions.*—This is provided by the 45th rule in the following terms:

Rule 45.

3. Bailiff to make return of executions.

Rule 45. At every Court, or at such other times as the Judge shall require, the High Bailiff shall deliver a statement or return, pursuant to the form in the schedule, of what shall have been done since his last return under every process of execution or commitment which he shall have been required to execute.

The following is the form of this return:—

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Form of return by Bailiff to Judge of executions.

BAILIFF'S RETURN OF EXECUTIONS.

RETURN BY THE HIGH BAILIFF made the day of 184 .

In the County Court of at .

Name of Sub-Bailiff.	No. of Execution.	No. of Summons.	Plaintiff.	Defendant.	Nature of Process.	When issued.	Verdict and Costs adjudged.	Levied.	When levied.	Received for Bailiff's Charges for Levy.	Expenses of Sale.	Paid into Court.	When paid.	Remarks.
							£ s. d.	£ s. d.		£ s. d.	£ s. d.	£ s. d.		

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136. 4th. *To return List of Summonses served.*—This is required by the 46th rule in these terms:

Rule 46.

4. To return to Clerk list of summonses served.

Rule 46. Eight days before the day of the holding of the Court, the High Bailiff shall deliver to the Clerk of the Court a list of all summonses to appear which shall have been served, and the Clerk shall forthwith stick up such list in his office.

The following is the form of the return by High Bailiff to Clerk of summonses served:

Form of return by High Bailiff of summonses served.

County Court of

District of

High Bailiff's Return of Summonses, made the day of 184 , for the Court to be holden at on the day of 184 .

Name of Assistant Bailiff.	No. of Summons.	Plaintiff.	Defendant.	When served	How served.

137. 5th. *To make Return of Executions to Foreign Courts.*—This is directed by rule 47, as follows:

Rule 47.

5. To make return to foreign Courts of executions, &c.

Rule 47. Every High Bailiff required to execute any warrant of execution or commitment issuing out of any other Court, shall make a return to such last-mentioned Court forthwith on the execution thereof; and if he shall not have executed such warrant, he shall return the same at the expiration of two calendar months from the date thereof.

138. 6th. *To pay over Moneys received.*—It is thus directed by the 48th rule:

Rule 48.

6. To pay moneys received on process from his own Court within three days.

Rule 48. Every Bailiff levying or receiving any money by virtue of any process issuing out of the Court of which he is Bailiff, shall, within three days after the receipt thereof, pay over the same to the Clerk of such Court.

And thus by the 49th rule:

Rule 49.

To pay

Rule 49. If any High Bailiff shall have levied or received any money under any process issuing out of any other Court, he

shall, within three days from the receipt thereof, pay over such money, retaining the fees for execution thereof, to the High Bailiff of such last-mentioned Court.

In the execution of their duties the High Bailiffs and Bailiffs are directed to conform to all such general rules as shall be from time to time made for regulating the proceedings of the Court as hereinafter provided, and subject thereunto, to the order and direction of the Judge. (Sect. 33.)

moneys received on foreign process to the High Bailiff of foreign Court.

139. *Payment of High Bailiff.*—The High Bailiff is to be paid by "such fees as are set down in any schedule marked (D.) to this Act annexed, or which shall be set down in any schedule of fees reduced or allowed under the powers hereinafter contained for that purpose and none other." (Sect. 37.) But, by the same section, a Secretary of State, with the consent of the Treasury, is empowered to reduce such scale of fees and again to increase them, so that such scale given in the schedule shall not be in any case surpassed. And if the fees shall appear to be more than sufficient, the Secretary of State is empowered to order that a certain part only of these fees shall be paid to the officers respectively, but no such order is to be made to reduce the fees of any of the officers of any Court mentioned in schedule (A.) "below the average amount of their fees or emoluments during the seven years next before the passing of this Act, with a reasonable increase for any increase of business which they may severally have to perform by reason of this Act." (Sect. 37.) A subsequent section (the 39th) enacts, that "it shall be lawful for Her Majesty, with the advice of her Privy Council, to order" that the Bailiff and officers "shall be paid by salaries instead of fees, or in any manner other than is provided by this Act." (Sect. 39.) But no limit is prescribed to the salaries of the High Bailiffs as to those of the Judges and Clerks. (Sect. 40.)

Payment

140. *Compensation for loss of Office.*—By sect. 39 it is enacted, that if Her Majesty, with the advice of her Privy Council, should order that Bailiffs and officers of the Courts holden under this Act should be paid by salaries instead of fees, or in any other manner; or should order that any Court should be

Compensation.

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abolished; or the district consolidated with any other district, or if any Act should be passed providing that the said Courts or any of them should be abolished, or otherwise constituted than is provided by this Act, no such officer should be "entitled to any compensation, on account of ceasing to hold his office, or to receive the fees allowed by this Act, or on account of his emoluments being affected by such abolition or alteration," unless he shall have been "Bailiff or other officer before the passing of this Act," in any of the Courts in schedule (A.) "in which case he shall be entitled to compensation for the loss of his fees or emoluments, in the manner and subject to the same regulations as he would have been entitled thereto under the provisions herein contained, in case he had been deprived of any fees or emoluments by reason of the passing of this Act." (Sect. 39.)

Payment of Assistant Bailiff.

141. *Payment of Assistant Bailiffs.*—The Assistant Bailiffs are to be paid by the High Bailiffs on a scale of remuneration approved by the Judge. It is by section 33 enacted, that "the said High Bailiffs shall be entitled to receive all fees and sums of money allowed by this Act in the name of fees payable to the Bailiff, out of which they shall provide for the execution of the duties for which such fees are allowed, *and for the payment of the Bailiffs and officers* appointed to assist them, according to such scale of remuneration as shall be from time to time approved by the Judge." (Sect. 33.)

Responsibility for acts of Assistant Bailiff.

142. *Responsibility of High Bailiffs for Acts and Defaults of his Assistant Bailiffs.*—An important provision of the statute is that which makes the High Bailiff "responsible for all the acts and defaults of himself and of the Bailiffs appointed to assist him, in like manner as the Sheriff of any county in England is responsible for the acts and defaults of himself and his officers." (Sect. 33.)

Responsibility for escapes and neglect to levy.

143. *Responsibility of Bailiff for Escapes and Neglect to levy.*—By the 115th section, upon complaint of the party aggrieved, by the "neglect, or connivance, or omission" of any Bailiff employed to levy any execution against "goods and chattels," whereby the

opportunity has been lost of levying such execution, "and the fact alleged being proved to the satisfaction of the Court on the oath of any credible witness, the Judge shall order such Bailiff to pay such damages as it shall appear that the plaintiff has sustained thereby, not exceeding in any case the sum of money for which the said execution issued, and the Bailiff shall be liable thereto," and such damages may be recovered by the same means as a judgment of the Court is enforced. (Sect. 115.) The section is *verbatim* as follows:

Section 115.

Bailiffs made answerable for escapes, and neglect to levy execution.

Sect. 115. And be it enacted, that in case any Bailiff of the said Court who shall be employed to levy any execution against goods and chattels shall, by neglect, or connivance or omission, lose the opportunity of levying any such execution, then upon complaint of the party aggrieved by reason of such neglect, connivance, or omission, (and the fact alleged being proved to the satisfaction of the Court on the oath of any credible witness,) the Judge shall order such Bailiff to pay such damages as it shall appear that the plaintiff has sustained thereby, not exceeding in any case the sum of money for which the said execution issued, and the Bailiff shall be liable thereto; and upon demand made thereof, and on his refusal so to pay and satisfy the same, payment thereof shall be enforced by such ways and means as are herein provided for enforcing a judgment recovered in the said Court.

Penalty for extortion or misconduct.

144. *Penalties for Extortion or Misconduct.*—By sect. 116 it is enacted, that if any Bailiff, "acting under colour or pretence of the process of the said Court, shall be charged with extortion or misconduct, or with not duly paying or accounting for any money levied by him under the authority of this Act," the Judge may inquire in a summary way, &c. and "make such order thereupon for the repayment of any money extorted, or for the due payment of any money so levied as aforesaid," as he shall think just; and also, "if he shall think fit, to impose such fine upon the Clerk, Bailiff, or Officer, not exceeding 10*l.* for each offence, as he shall deem adequate," payment of which may be enforced in the same manner as a judgment recovered. (Sect. 116.)



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One case only has occurred, or, at least, is reported, in which it has been deemed necessary to visit the Bailiff with this penalty. That is the case of *Roy* v. *Cuthbert* (1 C. C. Chron. 126). As it turns upon the facts, and may be useful both as a precedent and as a warning, it will be as well to give it entire. It was heard in the Southwark County Court, before Mr. Heath.

Roy v. *Cuthbert* (1C.C.Chron. 126).

This was an application by the plaintiff, under the 115th and 116th sections of 9 & 10 Vict. c. 95, against Mr. Pritchard, the High Bailiff, and a person of the name of Beale, who acts as his clerk under the following circumstances:

The plaintiff brought an action against the defendant in this Court and obtained a verdict for 5*l.* damages and costs, which was ordered to be paid on the 19th; default being made, an execution was issued on the 25th, and sent to the High Bailiff to be executed: the plaintiff finding that, although the defendant was in good circumstances, no levy was made, personally made repeated searches and applications at the High Bailiff's office to the clerk, Beale, but was unable to obtain any satisfactory explanation or reason why the execution was not levied; the plaintiff called again on November 3, and again saw Beale, who stated he had taken the execution out of the officer's hands, as he had seen the defendant, and the money would be paid on the following Saturday; the plaintiff again called, but being unable to obtain any satisfactory explanation, notice was given that this application would be made to the Court. The 115th section empowers the Judge to order the Bailiff of the Court to pay the amount of the damages and costs, if it shall appear that by the fault of any Bailiff who should be employed to levy any execution against the goods and chattels of a defendant, the plaintiff shall have lost the opportunity of levying such execution, and the 116th section empowers the Judge to inflict costs, and to proceed in a summary way, by penalty or fine, upon any Clerk, Bailiff, or Officer of the Court, who should be charged with misconduct, or for not duly paying or accounting for moneys received under the process of the Court.

On the part of the plaintiff it was contended that sufficient was shown to render the Bailiff liable to pay the damages and costs under the 115th section, and to the infliction of costs upon the clerk, Beale, under the 116th section.

The High Bailiff produced Beale, who explained that the difficulties had arisen owing to his having received a crossed check from the defendant in discharge of the execution.

The Judge, who had taken time to consider the point raised under the 116th section, in giving judgment, said he was of opinion a clear case had been made out against the High Bailiff, and he should therefore order him to pay the amount of the damages and costs; but with respect to the other part of the application, he was of opinion that Beale, being a mere clerk of the Bailiff, could not be considered as an officer of the Court, and did not come within the meaning of the 116th section; the words being expressly, "any Clerk, Bailiff, or Officer of the Court;" he should therefore dismiss that part of the application. The plaintiff might seek any remedy he might be advised by an action on the case.

The High Bailiff immediately paid the damages and costs.

Penalty for taking improper fees.

145. *Penalty for taking improper Fees.*—By sect. 117 it is enacted, that if any Bailiff "shall wilfully and corruptly exact, take, or accept any fee or reward whatsoever, other than except such fees as are or shall be appointed and allowed respectively as aforesaid, for or on account of anything done, or to be done, by virtue of this Act, or on any account whatsoever relative to putting this act into execution, shall, upon proof thereof before the said Court, and in the case of a Clerk, Treasurer, or High Bailiff, on allowance of the finding of the Court by the Lord Chancellor, be for ever incapable of serving or being employed under this Act in any office of profit or emolument, and shall also be liable for damages as herein provided." (Sect. 117.)

Protection of Bailiffs.

146. *Protection of Bailiffs.*—A penalty of 5*l.* is imposed upon any person assaulting a Bailiff in the execution of his duty, or making or attempting a rescue; and the Bailiff of the Court, or any peace officer, may in such cases take the offender into custody without a warrant. The section is as follows:

Section 114 — Penalty for assaulting Bailiffs, or rescuing goods taken in execution.

Sect. 114. And be it enacted, that if any officer or Bailiff of any Court holden under this Act shall be assaulted while in the execution of his duty, or if any rescue shall be made or attempted to be made of any goods levied under process of the Court, the person so offending shall be liable to a fine not

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exceeding 5*l.*, to be recovered by order of the Court, or before a Justice of the Peace as hereinafter provided; and it shall be lawful for the Bailiff of the Court or any peace officer in any such case to take the offender into custody (with or without warrant), and bring him before such Court or Justice accordingly.

147. *Distress not to be unlawful for Want of Form.*—A defect or want of form in the processes or proceeding relating to any distress made for levy of any sum of money by virtue of this Act, is not to render the distress itself unlawful nor to make the Bailiff a trespasser, nor is the party distraining to be deemed a trespasser from the beginning on account of any irregularity which shall afterwards be committed by the party distraining. This is the section:

Section 137. — Distress not unlawful for want of form.

Sect. 137. And be it enacted, that where any distress shall be made for any sum of money to be levied by virtue of this Act, the distress itself shall not be deemed unlawful, nor the party making the same be deemed a trespasser, on account of any defect or want of form in the information, summons, conviction, warrant of distress, or other proceeding relating thereto, nor shall the party distraining be deemed a trespasser from the beginning on account of any irregularity which shall afterwards be committed by the party so distraining, but the person aggrieved by such irregularity may recover full satisfaction for the special damage in an action upon the case.

Actions against Bailiffs.

148. *Actions against Bailiffs.*—By sect. 138 actions and prosecutions against officers are to be laid and tried in the county where the fact was committed, and to be commenced within three months; one month's notice is to be given to the defendant, and plaintiff is not to recover if amends be tendered before action brought, or a sufficient sum of money paid into Court with costs after action brought (sect. 138); and if the verdict be for less damages than 20*l.* no costs shall be awarded to the plaintiff, unless the Judge shall certify in Court upon the back of the record that the action was fit to be brought in such Superior Court. (Sect. 139.)

By 13 & 14 Vict. c. 61 s. 19, further provision is made for the protection of High Bailiffs, for which see *ante*, page 142.

Upon the question as to the manner of computing the three months within which the action is to be brought against a Bailiff for an irregular levy there has been one reported decision, in the case of *Barrett* v. *Balme* (1 C. C. Chron. 240), in the County Court of Gloucestershire. The facts of that case were these, as stated by the plaintiff's attorney:

Barrett v *Balme* (1C.C.Chron. 240).

The action was brought by Mr. Barrett, of Cheltenham, to recover 5*l.* 16*s.* 1*d.* being the difference between a levy made by the defendant as High Bailiff, under an execution, and the amount recovered in an action in which Mr. Barrett was the plaintiff, and Charles Merrick the defendant. The High Bailiff stood in the position of sheriff as far as this Court was concerned, and it was his duty to see that a writ of execution was properly executed. On the 9th of August last, a writ of execution had been issued against the goods of Merrick. On the next day it was put into the house; the officers remained in possession nine days, being four days after the time fixed by the Act of Parliament, and then the goods were removed by the officers of the High Bailiff, for whom he was responsible, and sold at auction by the broker of the Court. The goods produced 3*l.* 7*s.* 11*d.*; the amount for which execution had been issued was 9*l.* 4*s.*; so that there was a deficiency of 5*l.* 16*s.* 1*d.* for the recovery of which this action was brought. The duty of the High Bailiff, when a writ of execution was levied, was to seize all the goods on the premises, if it were necessary, to satisfy it, and to sell them, unless there was a better claimant; but he had no right to remain on the premises nine days, and then remove what he considered sufficient to a broker's shop; and if the sale produced less than the debt, then beyond all question the High Bailiff would be liable for the difference. But the truth of the matter was, and so it would turn out, the High Bailiff thought when he removed Merrick's goods that he had taken sufficient to satisfy the execution; but the plaintiff was not to suffer by his omission to take sufficient. He anticipated that an attempt would be made to prove that the goods on Merrick's premises were mortgaged to some persons, but he was prepared to meet the defendant on that point; he would show that in addition to the mortgaged goods there were other goods on the premises which might have been seized to satisfy

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the writ, and in fact a second writ of execution went in against the same defendant. The amount paid into Court by the High Bailiff, as the proceeds of the writ, was only 3*l.* 7*s.* 11*d.*

Carter objected to the case proceeding, because, assuming the facts of the case had been stated by Mr. Chesshyre, the action had not been brought within the period specified by the Act of Parliament. The Act directed that the action should be brought within three calendar months. Now, the facts in this case were the injury, the taking possession, and the sale; and it was quite clear that the execution was issued on the 9th of August, the levy on the 10th, possession was held for nine days, and the sale took place on the 26th. Now the action was commenced on the 8th of December, and as that was not within three months of the time when the cause of action arose, the plaintiff must be nonsuited.

Chesshyre said that *Carter* had forgotten to state a most important fact, namely, that the return to the writ was not made until September 13; until the return was made, it was impossible for the plaintiff to tell whether the High Bailiff had or had not made a sufficient levy.

The Court.—In that case the action would be for a false return to the writ. But this was a very different action; it was not for a false return, but for neglect in not making a proper levy.

Chesshyre contended that, as the writ was running, the High Bailiff might have levied again and again until he had seized enough to make the proper return.

The Judge.—You do not implicate Mr. Balme personally?

Chesshyre.—Certainly not.

Carter said the return on the 13th of September was not the act complained of in the notice of action; the whole ground of complaint was, that the defendant neglected, on the 10th, to seize sufficient goods to satisfy the writ of execution.

The Judge said if it should turn out in the course of the trial that the only act the plaintiff complained of was the removal of goods less in value than was sufficient to satisfy the debt, he thought that Mr. Carter's objection ought to stand good, because the neglect or error in question occurred three months before the action was brought. He did not think that the return made to the writ affected this case, because the

return was not the matter complained of, and the remedy in that case would be different. But there was a period of two months during which the High Bailiff might levy, and as the warrant was dated the 9th of August, it might have been executed any time before the 9th of October; and, therefore, if he found the matter complained of had occurred between the 9th of September and the 9th of October, he should send the case to the jury.

Barrett v. Balme (1 C.C.Chron. 203).

Chesshyre said the High Bailiff had levied twice.

The JUDGE said he should prohibit the plaintiff from relying on anything that occurred prior to the 9th of September, as that was more than three months before the action commenced.

Upon these facts, then, it was held, and we think rightly, that the three months within which an action must be brought against a Bailiff for an irregularity in taking an execution will begin to run from the day of the levy, and not from the day of the return.

Other provisions.

149. *Other Provisions.*—The provisions affecting the Bailiffs in common with the other officers will be found in the next chapter relating to the Officers generally.

The duties of Bailiffs in serving processes, arrests, levying executions, giving possession of tenements, will be found described, with the necessary forms, in their proper place among the *Practice of the Courts* in a subsequent part of this treatise.

For the law and practice relating to their Fees, they are referred to the chapter on *Fees*.

Fees.

Removal.—By section 4 of 13 & 14 Vict. c. 61, the Lord Chancellor is empowered, when "in his discretion he shall think fit, to remove the High Bailiff from his office."

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OF THE OFFICERS GENERALLY.

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The appointment, the qualification, the disqualification, the payment, and the duties of Judge, Treasurer, Clerk, and Bailiff have been already successively described, and it will therefore be unnecessary to repeat them; but it will be convenient to collect in a distinct chapter such of the provisions of the County Courts Act as relates to the officers generally, even although the review will compel some repetitions. But references backward and forward being always extremely objectionable in a treatise on the *practice* of the law, we prefer the risk of wearying by reiteration to the danger of perplexing by sending the practitioner from page to page to find the information he is seeking.

150. *Offices not to be conjoined.*—The 28th section prohibits any officer, his partner, clerk, or servant, from filling any other office in the same Court. The section is as follows:

Section 28. — Offices of Clerk, Treasurer, and Bailiff not to be conjoined.

Sect. 28. And be it enacted, that it shall not be lawful for the Clerk of any Court holden under this Act, or the partner of any such Clerk, or any person in the service or employment of such Clerk or his partner, to act as Treasurer or High Bailiff of the Court; or for the Treasurer, his partner or clerk, or any person in the service or employment of such Treasurer or his partner, to act as Clerk or High Bailiff; or for the High Bailiff, his partner or clerk, or any person in the service or employment of such High Bailiff or his partner, to act as Clerk or Treasurer of the Court.

151. *Officers not to act as Attorneys in the Court.*—It is thus provided by section 29:

Section 29. — Officers not to act as

Sect. 29. And be it enacted, that no Clerk, Treasurer, High Bailiff, or other officer of the Court shall, either by himself or

his partner, be directly or indirectly engaged as attorney or agent for any party in any proceeding in the said Court.

attorneys in the Court.

152. *Penalty for Non-observance.*—The 30th section imposes a penalty of 50*l.* for offending against either of the above prohibitions, to be recovered by any person who shall sue for the same in any of Her Majesty's Superior Courts of Record, by action of debt, or on the case.

Section 30.

Penalty of 50*l.* on non-observance of the two previous enactments.

Sect. 30. And be it enacted, that every person who, being the Clerk of any such Court, or the partner of such Clerk, or a person in the service or employment of any such Clerk or of his partner, shall accept the office of Treasurer or High Bailiff of such Court, or who, being the Treasurer of any such Court, or the partner of any such Treasurer, or a person in the service or employment of any such Treasurer or of his partner, shall accept the office of Clerk or High Bailiff in the execution of this Act, or who being the High Bailiff of such Court, or the partner of any such High Bailiff, or a person in the service or employment of any such High Bailiff or of his partner, shall accept the office of Clerk or Treasurer in the execution of this Act, and also every Clerk, Treasurer, High Bailiff, or other officer of any such Court who shall be, by himself or his partner, or in any way, directly or indirectly, concerned as attorney or agent for any party in any proceeding in the said Court, shall for every such offence forfeit and pay the sum of fifty pounds to any person who shall sue for the same in any of Her Majesty's Superior Courts of Record, by action of debt or on the case.

153. *Officers to be entitled to Fees.*—Provision is made, by the 37th section, for the fees to which the officers are to be entitled. As this will come to be considered in the chapter upon "Fees," it will be unnecessary to do more in this place than give the section *verbatim.*

Section 37.

Fees to be taken according to schedule (D.), and tables to be exhibited in conspicuous places.

Sect. 37. And be it enacted, that there shall be payable on every proceeding in the Courts holden under this Act, to the Judges, Clerks, and High Bailiffs of the several Courts, such fees as are set down in the schedule marked (D.) to this Act annexed, or which shall be set down in any schedule of fees reduced or altered under the power hereinafter contained for that

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purpose, and none other; and a table of such fees shall be put up in some conspicuous place in the court-house and in the Clerk's office; and the fees on every proceeding shall be paid in the first instance by the plaintiff or party on whose behalf such proceeding is to be had, on or before such proceeding, and in default payment thereof shall be enforced by order of the Judge by such ways and means as any debt or damage ordered to be paid by the Court can be recovered; and the fees upon executions shall be paid into Court at the time of the issue of the warrant of execution, and shall be paid by the Clerk of the Court to the Bailiff upon the return of the warrant of execution, and not before: provided always, that it shall be lawful for one of Her Majesty's principal Secretaries of State, with the consent of the Commissioners of Her Majesty's Treasury, to lessen the amount of the fees to be taken in the Courts holden under this Act in such manner as to him shall seem fit, and again to increase such fees, so that the scale of fees given in the schedule to this Act be not in any case surpassed; and in every Court holden under this Act in which the fees allowed to be taken by the Judges, Clerks, or Bailiffs of the Court shall appear to be more than sufficient, it shall be lawful for the said Secretary of State to order that a certain part only of their fees shall be paid to them respectively, not exceeding, in the case of Judges and Clerks, the sums hereinafter mentioned as the greatest salaries to be by them respectively received; and in such case, and so long as such direction shall be in force, the amount of the residue of the fees shall be accounted for and paid to the Treasurer of the Court, and shall form part of the general fund of the Court; but no such order shall be made to reduce the fees of any of the Judges, Clerks, and officers of any Court mentioned in the said schedule (A.) (so long as they shall be paid by fees) below the average amount of their fees or emoluments during the seven years next before the passing of this Act, with a reasonable increase for any increase of business which they may severally have to perform by reason of this Act.

Fees may be reduced.

Appropriation of surplus fees.

154. *Officers may be paid by Salaries instead of Fees.*—The 39th section empowers the Privy Council to order that the officers be paid by salaries instead of fees, or in any manner other than is provided by the Act. And in case of any changes made in the

arrangements of the Districts or Courts, or their abolition of, or alteration of fees or salaries, no officer to be entitled to compensation unless he had been previously an officer of one of the Courts in schedule (A.), in which case he is to be entitled to the same compensation as he would have been entitled to had he been deprived of his office by the passing of this Act.

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Section 39.

Officers of Courts may be paid by salaries instead of fees. If Court abolished, no compensation allowed, except in certain cases.

Sect. 39. And be it enacted, that it shall be lawful for Her Majesty, with the advice of her Privy Council, to order that the Judges, Clerks, Bailiffs, and officers of the Courts holden under this Act, or any of them, shall be paid by salaries instead of fees, or in any manner other than is provided by this Act; and if Her Majesty shall be pleased, with the advice aforesaid, to make such order, or to order that any such Court shall be abolished, or that the district for which any such Court is holden shall be consolidated with any other district, or if any Act shall be passed whereby it shall be provided that the said Courts or any of them shall be abolished, or otherwise constituted than is provided by this Act, no such Clerk or Bailiff, nor any Judge, County Clerk, Treasurer, or other officer of any such Court, shall be entitled to any compensation on account of ceasing to hold his office, or to receive the fees allowed by this Act, or on account of his emoluments being affected by such abolition or alteration, unless he shall have presided or acted as Judge, Assessor, County Clerk, Treasurer, Clerk, Bailiff, or other officer, before the passing of this Act, in any of the Courts mentioned in the schedule (A.) to this Act annexed, in which case he shall be entitled to compensation for the loss of his fees or emoluments, in like manner and subject to the same regulations as he would have been entitled thereto under the provisions herein contained in case he had been deprived of any fees or emoluments by reason of the passing of this Act; and in such case all sums payable in the name of fees to such officers of the Court as shall be paid by salaries shall be paid from time to time to the Treasurer of the Court, who shall pay the said several salaries out of the proceeds of such fees, and the surplus shall form part of the general fund of the Court; and whenever the net amount of the fees shall not be sufficient to pay the said several salaries, the deficiency shall be made good and paid out of the consolidated fund of Great Britain and Ireland.

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155. *Amount of Compensation.*—The amount of compensation is provided by sect. 38, as follows:

Compensation for persons whose rights or emoluments will be diminished.

Sect. 38. And be it enacted, that every person who is entitled to any franchise, right of appointment, or office, under any of the Acts under which any Court mentioned in the said schedule (A.) is holden, and every person who shall have been entitled to any fees or salary for his services in the execution of any of the same Acts, or for the issue of any writs to the Sheriff out of the High Court of Chancery, and also every person who is entitled to any franchise or right of appointment to hold office in any Court in any district in which the County Court had not jurisdiction before the passing of this Act, and in which district a Court shall be established under the provisions of this Act, and also every person holding any office in any such last-mentioned Court whose franchise or right of appointment or office shall be affected, abolished, or taken away, or whose emoluments shall be diminished or taken away under the operation of this Act, shall be entitled to make a claim for compensation to the Commissioners of Her Majesty's Treasury within six calendar months after the passing of this Act, or after the alteration of such Court; and it shall be lawful for the said commissioners, in such manner as they shall think proper, to inquire what was the nature of the franchise or right of appointment, and what was the tenure of any such office, and what were the lawful fees and emoluments in respect of which such compensation should be allowed; and the commissioners in each case shall award such gross or yearly sum and for such time as they shall think just to be awarded upon consideration of the special circumstances of each case; and all such compensations shall be paid out of the consolidated fund of the United Kingdom of Great Britain and Ireland: provided always, that if any person holding any office in any of the said Courts shall be appointed after the passing of this Act to any public office or employment, the payment of the compensation awarded to him under this Act, so long as he shall continue to receive the salary or emoluments of such office or employment, shall be suspended if the amount of such salary or emoluments is greater than the amount of such compensation, or if not, shall be diminished by the amount of such salary or emoluments: provided also, that nothing in this Act contained shall be deemed to entitle any person to compen-

sation for the loss or diminution of the profits of any office to which he shall have been appointed under any Act containing a provision, either that he is not to be entitled to compensation for the loss or diminution of the profits of his office, or that such Act should cease on or within a limited time after the passing of any general Act for the recovery of small debts, or under the provisions of either of the said Acts of the eighth year of Her Majesty and of the ninth year of Her Majesty.

156. *Amount of Salaries.*—The salaries of the officers are appointed by sect. 40, which *limits* the salary of the Judges to 1,200*l.* and of the Clerks to 600*l.* per annum, *exclusive* of salaries to Clerks employed in the business of the Courts, and other expenses incidental to the offices and travelling expenses, which the Treasury is empowered to allow. But the salary of any person who had been previously a Judge or Clerk in any Court in schedule (A.) is not to be less than the average amount of the emoluments of his office during the seven years next before the passing of this Act.

Section 40. — Limiting amount of salaries to be paid under this Act.

Sect. 40. And be it enacted, that the greatest salaries to be received in any case by the Judges and Clerks of the Courts holden under this Act shall be twelve hundred pounds by a Judge and six hundred pounds by a Clerk, exclusive of all salaries to his clerks employed in the business of the Court, and other expenses incidental to his office, unless in the case of any Judge or Clerk of any such Court acting in the same capacity before the passing of this Act in any Court mentioned in the said schedule (A.), whose salaries shall not be limited to any sum less than the average amount of the fees and emoluments of their respective offices during the seven years next before the passing of this Act: provided always, that it shall be lawful for the Commissioners of Her Majesty's Treasury to allow in each case such sum as they shall in each case deem reasonable to defray travelling expenses, with reference to the size and circumstances of each district.

157. *Protection of Officers.*—There are various provisions for the protection of officers in the execution of their duty. By sect. 114 a fine of 5*l.* is imposed upon any person assaulting "any officer or

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Bailiff of any Court while in the execution of his duty;" or making or attempting any rescue of any goods levied under process of the Court, which may be recovered by order of Court or before a Justice of Peace, as provided in a subsequent section. And "the Bailiff or any peace officer" is empowered, in any such case, to take the offender into custody (with or without a warrant), and bring him before such Court or Justice accordingly. (Sect. 114.) The following is the language of the statute:

Section 114.

Penalty for assaulting Bailiffs, or rescuing goods taken in execution.

Sect. 114. And be it enacted, that if any officer or Bailiff of any Court holden under this Act shall be assaulted while in the execution of his duty, or if any rescue shall be made or attempted to be made of any goods levied under process of the Court, the person so offending shall be liable to a fine not exceeding five pounds, to be recovered by order of the Court, or before a justice of the peace as hereinafter provided; and it shall be lawful for the Bailiff of the Court or any peace officer in any such case to take the offender into custody (with or without warrant), and bring him before such Court or justice accordingly.

158. *Power of Committal for Contempt.*—By sect. 113, if any person "shall wilfully insult the Judge, or any Juror, or any Bailiff, Clerk, or officer of the said Court, for the time being, during his sitting or attendance in Court, or in going to or returning from the Court, or shall wilfully interrupt the proceedings of the Court, or otherwise misbehave in Court, it shall be lawful for any Bailiff, or officer of the Court, with or without the assistance of any other person, by the order of the Judge, to take such offender into custody, and detain him until the rising of the Court." And the Judge is further empowered by warrant to commit the offender to prison, for a period not exceeding seven days, or to impose upon him a fine of 5*l.*, and in default in payment, to commit him to prison for a like period. The section is as follows:

Section 113.

Power of committal for contempt.

Sect. 113. And be it enacted, that if any person shall wilfully insult the Judge or any Juror, or any Bailiff, Clerk, or officer of the said Court, for the time being, during his sitting

or attendance in Court, or in going to or returning from the Court, or shall wilfully interrupt the proceedings of the Court, or otherwise misbehave in Court, it shall be lawful for any Bailiff or officer of the Court, with or without the assistance of any other person, by the order of the Judge, to take such offender into custody, and detain him until the rising of the Court; and the Judge shall be empowered, if he shall think fit, by a warrant under his hand, and sealed with the seal of the Court, to commit any such offender to any prison to which he has power to commit offenders under this Act for any time not exceeding seven days, or to impose upon any such offender a fine not exceeding five pounds for every such offence, and in default of payment thereof to commit the offender to any such prison as aforesaid for any time not exceeding seven days, unless the said fine be sooner paid.

One question only has arisen under this section, namely, Who may be deemed an "officer of the Court?" It was held by Mr. ESPINASSE, in an anonymous case (1 Cox & Macrae, 35), that a police constable accidentally in attendance at the Court was an "officer of the Court" within the meaning of the section, empowered, on the order of the Judge, to take into custody a person who had misbehaved himself. But this opinion appears to us very questionable. The words "officer of the Court" in this section cannot be construed as bearing any different or larger import than the same words in other sections; and it would be difficult to contend that such an accidental visitor, because he chances to be a policeman, would be entitled to the benefit of the protective provisions of the statute. Besides, the statute expressly defines who shall be the officers of the Court, and requires certain qualifications and certain forms of appointment; and to assert that a Judge can, upon the moment, constitute any stranger an officer by mere verbal directions to act as such, would be, in fact, to defeat all the provisions which the Legislature has thought fit to frame for insuring the officers' responsibility and fitness. Certainly the point is so doubtful that we would not recommend the example to be followed; for if it be, as it appears to us, an excess of jurisdiction, an action for false imprisonment might be successfully maintained.

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159. *Recovery of Tenements.*—In actions for recovery of tenements under the provisions of sect. 122, it is expressly enacted, by sect. 124, that no action or prosecution shall be brought against any officer of the County Court by whom any warrant of possession shall have been issued or executed, or any summons affixed "by reason that the person by whom the same shall be sued out had not lawful right to the possession of the premises." (Sect. 124.) This is the section:

Section 124. — Judges, Clerks, Bailiffs, or other officers not liable to actions on account of proceedings taken.

Sect. 124. And be it enacted, that it shall not be lawful to bring any action or prosecution against the Judge or against the Clerk of the Court by whom such warrant as aforesaid shall have been issued, or against any Bailiff or other person by whom such warrant may be executed or summons affixed, for issuing such warrant, or executing the same respectively, or affixing such summons, by reason that the person by whom the same shall be sued out had not lawful right to the possession of the premises.

For further particulars relating to this branch of the jurisdiction of the County Courts, the reader is referred to the chapter that treats of "the Recovery of Tenements."

160. *Limitation of Actions.*—A further protection is thrown about the officers by sections 138 and 139, which provide, that all actions and proceedings against officers of the County Courts for acts done by them in pursuance of the statute, shall be laid and tried in the county where the fact was committed, and shall be commenced within three calendar months after the fact committed; that "notice, in writing, of such action, and of the cause thereof," shall be given to the defendant one calendar month at least before the commencement of the action; nor is the plaintiff to recover in such action if tender of sufficient amends be made before action brought, or if, after action brought, a sufficient sum of money shall have been paid into Court, with costs, by, or on behalf of, the defendant; and that if the jury find for the plaintiff no greater damages than the sum of 20*l.*, no costs shall be awarded to the plaintiff, unless the Judge shall certify in Court, upon the back of

the record, that the action was fit to be brought in such Superior Court: (sects. 138, 139.) And by 13 & 14 Vict. c. 61, s. 19, it is further enacted

13 & 14 Vict c. 61, s. 19.

Sect. 19. That from and after the passing of this act no action shall be brought against any High Bailiff or Bailiff, or against any person or persons acting by the order and in aid of any High Bailiff, for anything done in obedience to any warrant under the hand of the Clerk or Clerks of the said Court and the seal of the said Court, until demand hath been made or left at the office of such High Bailiff by the party or parties intending to bring such action, or by his, her, or their attorney or agent, in writing, signed by the party demanding the same, of the perusal and copy of such warrant, and the same hath been refused or neglected by the space of six days after such demand; and in case after such demand, and compliance therewith by showing the said warrant to and permitting a copy to be taken thereof by the party demanding the same, any action shall be brought against such High Bailiff, Bailiff, or other person or persons acting in his aid, for any such cause as aforesaid, without making the Clerk or Clerks of the said Court who signed or sealed the said warrant defendant or defendants, that on producing or proving such warrant at the trial of such action the jury shall give their verdict for the defendant or defendants, notwithstanding any defect of jurisdiction or other irregularity in the said warrant; and if such action be brought jointly against such Clerk or Clerks and also against such High Bailiff or Bailiff, or person or persons acting in his or their aid, as aforesaid, then on proof of such warrant the Jury shall find for such High Bailiff or Bailiff, and for such person or persons so acting as aforesaid, notwithstanding such defect or irregularity as aforesaid; and if the verdict shall be given against the said Clerk or Clerks, that in such case the plaintiff or plaintiffs shall recover his, her, or their costs against him or them, to be taxed in such manner by the proper officer as to include such costs as such plaintiff or plaintiffs are liable to pay to such defendant or defendants for whom such verdict shall be found as aforesaid; and if any action shall be brought the defendant or defendants shall and may plead the general issue, and give the special matter in evidence at any trial had thereupon.

The object of this section is to protect the High Bailiff, &c., when acting in obedience to a warrant, whether such warrant be void or not, and the protection does not extend to acts done by the Bailiff that are not in accordance with the warrant. In such cases no action can be brought against the High Bailiff, &c., unless he has refused or neglected to allow inspection or furnish a copy of the warrant for six days after demand.

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A case of very considerable interest has been decided, from what period, under certain circumstances, the three months within which an action is to be brought, is to be calculated: (*Barrett* v. *Balme*, 1 C. C. Chron. 240), as to which see *ante*, p. 131.

Barrett v. *Balme* (1 C.C.Chron. 240).

162. *Remedies by Statute against Officers for Misconduct.*—The protection of the public against the misconduct of officers of the County Courts, is provided for by sections 116 and 117, which enact, that if any officer of the Court, "acting under colour or pretence of the process of the said Court, shall be charged with extortion or misconduct, or with not duly paying or accounting for any money levied by him under the authority of this Act," the Judge may inquire in a summary way, and "make such order thereupon for the repayment of any money so extorted, or for the due payment of any money so levied as aforesaid, and for the payment of such damages and costs as he shall think just," and also impose a fine not exceeding 10*l.* The statute runs thus:

Section 116. — Remedies against, and penalties on, Bailiffs and other officers for misconduct.

Sect. 116. And be it enacted, that if any Clerk, Bailiff, or officer of the Court, acting under colour or pretence of the process of the said Court, shall be charged with extortion or misconduct, or with not duly paying or accounting for any money levied by him under the authority of this Act, it shall be lawful for the Judge to inquire into such matter in a summary way, and for that purpose to summon and enforce the attendance of all necessary parties in like manner as the attendance of witnesses in any case may be enforced, and to make such order thereupon for the repayment of any money extorted, or for the due payment of any money so levied as aforesaid, and for the payment of such damages and costs, as he shall think just; and also, if he shall think fit, to impose such fine upon the Clerk, Bailiff, or officer, not exceeding ten pounds for each offence, as he shall deem adequate; and in default of payment of any money so ordered to be paid, payment of the same may be enforced by such ways and means as are herein provided for enforcing a judgment recovered in the said Court.

Section 117. — Penalty on officers

Sect. 117. And be it enacted, that every Treasurer, Clerk, Bailiff, or other officer employed in putting this Act or any of the powers thereof in execution, who shall wilfully and corruptly

exact, take, or accept any fee or reward whatsoever, other than and except such fees as are or shall be appointed and allowed respectively as aforesaid, for or on account of any thing done or to be done by virtue of this Act, or on any account whatsoever relative to putting this Act into execution, shall, upon proof thereof before the said Court, and in the case of a Clerk, Treasurer, or High Bailiff on allowance of the finding of the Court by the Lord Chancellor, be for ever incapable of serving or being employed under this Act in any office of profit or emolument, and shall also be liable for damages as herein provided.

taking fees besides those allowed.

Another case of some interest, but too long for extract, and turning entirely upon its facts, and in which the defendant was acquitted, is that of *Oats* v. *Weeks* (1 C. C. Chron. 82).

162. *Offences by Officers at Common Law.*—Besides the remedies thus given by the statute, the Common Law visits the offences of officers of Courts of Justice with severe penalties. A judicial officer guilty of bribery may be indicted and punished by fine or imprisonment, or both. (Bac. Abr. *Office, n.*) Extortion is the demanding and taking money or other thing which is not due, under colour of office. If a sum be allowed to an officer by statute, and he take more than that sum, it is extortion. (Co. Litt. 368; 2 Roll. 263.) Extortion is punishable by fine, or imprisonment, or both, upon indictment at Common Law. An action may also be maintained against him at the suit of the injured party (*Woodgate* v. *Knatchbull*, 2 T. R. 148), or on application to the Court he will be removed, or suspended, or fined and imprisoned for contempt. (*Longdill* v. *Jones*, 1 Stark. 345; *Pater* v. *Croome*, 7 T. R. 336.)

Offences by officers.

163. *Sale of Office.*—The sale of an office is an offence against both the Common and the Statute Law.

Sale of office.

At Common Law it is indictable (Hawk. P. C. c. 67), and the reason asserted is, that when an officer buys his place he is subject to a greater temptation to resort to extortion, or yield to bribery. (Bac. Abr. tit. *Offices.*)

The leading statute relating to the sale of offices is the 5 & 6 Edw. 6, c. 16, which is as follows:

Statute 5 & 6 Edw. 6, c. 16. As to sale of offices.

Sect. 1. For avoiding of corruption, which may hereafter happen to be in the officers and ministers in these Courts, places, or rooms, wherein there is requisite to be had the true administration of justice, or services of trust, and to the intent that persons worthy and meet to be advanced to the place where justice is to be administered, or any service of trust executed, shall hereafter be preferred to the same, and no other.

Sect. 2. Be it therefore enacted, that if any person or persons at any time hereafter bargain or sell any office or offices, or deputation of any office or offices, or any part or parcel of any of them, or receive, have, or take any money, fee, reward, or any other profit, directly, or indirectly, or take any promise, agreement, covenant, bond, or any assurance to receive or have any money, fee, reward, or other profit, directly or indirectly, for any office or offices, or for the deputation of any office or offices, or any part of any of them, or to the intent that any person should have, exercise, or enjoy any office or offices, or the deputation of any office or offices, or any part of any of them, which office or offices, or any part or parcel of them, shall in any wise touch or concern the administration or execution of justice, or the receipt, controlment, or payment of any of the King's Highness's treasure, money, rent, revenue, account, aulneage, auditorship, or surveying any of the King's Majesty's honours, castles, manors, lands, tenements, woods, or hereditaments, or any of the King's Majesty's customs, or any administration, or necessary attendance to be had, done, or executed in any of the King's Majesty's custom-house or houses, or the keeping of any of the King's Majesty's towns, castles, or fortresses, being used, occupied, or appointed for a place of strength and defence, or which shall concern or touch any clerkship to be occupied in any manner of Court of Record, wherein justice is to be administered, that then all and every such person and persons that shall so bargain or sell any of the said office or offices, deputation or deputations, or that shall take any money, fee, reward, or profit for any of the said office or offices deputation or deputations, of any of the said offices, or any part of any of them, or

Statute 5 & 6 Edw. 6, c. 16.

that shall take any promise, covenant, bond, or assurance for any money, reward, or profit to be given for any of the said office or offices, deputation or deputations of any of the said office or offices, or any part of any of them, shall not only lose and forfeit all his and their right, interest, and estate which such person or persons shall then have of, in, or to any of the said office or offices, deputation or deputations, or any part of any of them, or of, in, or to the gift or nomination of any of the said office or offices, or for the deputation or deputations of which office or offices, or for any part of any of them, any such person or persons shall so make any bargain or sale, or take or receive any sum of money, fee, reward, or profit, or any promise, covenant, bond, or assurance to have or receive any reward, money, or profit; but also that all and every such person or persons that shall give or pay any sum of money, reward, or fee, or shall make any promise, agreement, bond, or assurance for any of the said offices, or for the deputation or deputations of any of the said office or offices, or any part of any of them, shall immediately, by and upon the same fee, money, or reward given or paid, or upon any such promise, covenant, bond, or agreement had or made for any fee, sum of money, or reward to be paid as aforesaid, be adjudged a disabled person in the law to all intents and purposes, to have, occupy, or enjoy the said office or offices, deputation or deputations, or any part of any of them, for the which such person or persons shall so give or pay any sum of money, fee, or reward, or make any promise, covenant, bond, or other assurance to give or pay any sum of money, fee, or reward.

Sect. 3. It is further enacted, that all and every such bargains, sales, promises, bonds, agreements, covenants, and assurances, as be before specified, shall be void to and against him and them by whom any such bargain, sale, bond, promise, covenant, or assurance shall be had or made.

Sect. 4. Provided always, that this Act, or any thing therein contained, shall not in anywise extend to any office or offices whereof any person or persons is, are, or shall be seised of any estate of inheritance; nor to any office of parkership, or of the keeping of any park-house, manor, garden, chase, or forest,

or to any of them, any thing in this Act heretofore mentioned to the contrary thereof in any wise notwithstanding.

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Statute 5 & 6 Edw. 6, c. 16.

Sect. 5. Provided also, that if any person or persons do hereafter offend in any thing contrary to the tenor and effect of this Act, yet that notwithstanding all judgments given, and all other act or acts executed or done by any such person or persons so offending by authority or colour of the office or deputation, which ought to be forfeited, or not occupied, or not enjoyed by the person so offending as is aforesaid, after the said offence so by such person so committed or done, and before such person so offending for the same offence be removed from the exercise, administration, and occupation of the said office or deputation, shall be and remain good and sufficient in law, to all intents, constructions and purposes, in such like manner and form as the same should or ought to have remained and been if this Act had never been had or made: provided also, that this Act shall not extend to be prejudicial or hurtful to any of the Chief Justices of the King's Courts, commonly called the King's Bench or Common Pleas, or to any Justices of Assize that now be, or hereafter shall be, but that they and every of them may do in every behalf, touching or concerning any office or offices to be given or granted by them or any of them, as they or any of them might have done before the making of this Act, any thing above mentioned to the contrary in any wise notwithstanding.

An Act was subsequently passed for the better securing the object of this statute. By the 49 Geo. 3, c. 126, the above Act is extended to Ireland and Scotland, and to all civil, military, and naval offices in the United Kingdom, the colonies, and in the gift of the East India Company; and by the 2nd section the right of appointment to any office forfeited under this or the former Act is vested in the Crown. These are the sections applicable to officers of the County Courts:

Statute 49 Geo. 3, c. 126.

Sect. 3. Renders it a misdemeanor either to buy or sell, or to receive or give any money, reward, or profit, or any promise, agreement, bond, or assurance, directly or indirectly, for any office, commission, place, or employment specified in or within

the meaning of the former or the present Act, or for any deputation thereto, or any participation of the profits thereof, or for any appointment thereto, or resignation thereof, or for the consent or voice of any person to any such appointment or resignation.

Statute 49 Geo. 3, c. 126.

Sect. 4. Renders it a misdemeanor in any person either to receive or give any money, reward, or profit, or any promise, agreement, bond, or assurance, directly or indirectly, for any interest, solicitation, or recommendation, in any way touching any nomination or appointment to any such office, place, or employment as aforesaid, or for any person in expectation of money, reward, or profit, to solicit, recommend, or negotiate for any person, touching any such nomination or appointment.

Sect. 5. Renders it a misdemeanor to open any house or office for soliciting, transacting, or negotiating any business relating to the sale or purchase, resignation or exchange, of any office or employment under any public department.

Sect. 6. Imposes a penalty of *50l.* on any person advertising or publishing any such house or office, or the names of any brokers, agents, or solicitors, or any advertisements or proposals for any of the purposes aforesaid, the whole of the penalty to go to the person suing

Sect. 7. Provides that the Act shall not extend to any commissions and appointments in the band of gentlemen pensioners, the yeoman guard, the Marshalsea and Palace Court, nor to purchases and exchanges of commissions in his Majesty's forces at the regulated prices.

Sects. 9, 10, and 11. Provide that the Act shall not extend to an office excepted from the Act of Edw. 6, or to any office legally saleable before the passing of this Act, or to invalidate any agreement, bond, &c. which, before the passing of this Act was valid, or to prevent or make void any deputation to any office, in any case in which it is lawful to appoint a deputy, or any agreement, bond, &c. in respect of any allowance or salary out of the fees of such office, nor to any annual reservation or payment out of the fees of any office to any person having held such office; provided that the amount of such reservation, and

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the circumstances under which the same shall have been permitted, shall be stated in the commission or appointment of the person succeeding to such office, and paying such money.

It has been determined, that these statutes apply to all offices connected with the administration of justice, as to the office of Gaoler and Bailiff. (102 Freem. Rep. 19.) The disqualification thereby created cannot be removed; therefore the party cannot be appointed to the office on a subsequent vacancy (Co. Litt. 234, *a.*), not even by the Crown; and the Judges are bound to take notice of such disqualification, even though it be not pleaded.

What is a buying and selling of offices within the statutes has been decided in several cases. If money be taken to surrender an office, with a view to the appointment of the purchaser, whether by the Crown or a private patron, it is a buying and selling within the statute. (Co. Litt. 234, *a.*; 1 Roll. Abr. 157.) So, if an office be taken on condition that a superior officer shall take the profits, and to resign at his pleasure, the appointment is void. (Willes, 571.) And the sale of the deputation of an office is equally penal with the sale of the office itself. (*Godolphin* v. *Tudor*, 1 Salk. 468.) But not if the deputee is by the terms of the agreement to pay to his principal a less sum than he, or to keep only a portion of the fees. (*Ibid.; Culliford* v. *Cardonnell*, 1 Salk. 466.)

164. *Officers to perform certain Duties depending in the Court of Chancery.*—The 22nd section empowers the Judges and other officers to perform such duties relating to matters in Chancery, necessary to be done in their respective districts, as the Lord Chancellor shall from time to time, by any general order, direct. The section is as follows:

Section 22. — Judges, &c. appointed under this Act authorized to perform certain duties relating to matters depending in

Sect. 22. And be it enacted, that the Judges and other officers to be appointed under this Act shall be authorized and required to perform all such duties in or relating to any causes or matters depending in the High Court of Chancery, or before any Judge thereof, or before the Lord Chancellor in the exercise of any authority belonging to him, necessary or proper to be done in their respective districts, as the Lord Chancellor shall from time to time by any general order direct, and for this

purpose, and subject to the general rules and orders of the said Court, shall have and exercise all such authorities as may be duly exercised by the Commissioners or other officers of the said Court by whom such duties are now usually performed, and shall be entitled to receive the same fees and sums of money as are now payable in respect thereof, to be accounted for and applied by them as the other fees authorized by this Act to be received are directed to be accounted for and applied: provided always, that the future amount of such fees shall continue subject to the same authority for revising the same to which it is now subject.

the Court of Chancery.

BOOK III.

THE SHERIFFS' COURT

OF THE

CITY OF LONDON.

BOOK III.

SHERIFFS' COURT OF THE CITY OF LONDON.

10 & 11 Vict. c. lxxi.

The City of London was not included in the provisions of the County Courts Act. For that important district a distinct statute was deemed desirable, and the Sheriff's Court (a previously existing Local Court there) was, by stat. 10 & 11 Vict. c. lxxi. (local), assimilated to the County Courts.

We propose here to present a summary of so much of this statute as relates to the constitution of the Court and the officers. As the *Jurisdiction* and the *Practice* differ very slightly indeed from those of the County Courts, we shall, in the books devoted to those divisions of this treatise, merely indicate in notes where differences exist in the County Court, and it will be understood that, unless otherwise indicated, the Law and Practice are the same as in the County Courts.

165. *The Preamble.* It is to be observed that the statute *abolishes* the Court of Requests established by statute 5 & 6 Will. 4, c. 94.

Preamble.

5 & 6 Will. 4, c. 94.

Sect. 1. Whereas by an Act of Parliament passed in the Session of Parliament held in the fifth and sixth years of the reign of His Majesty King William the Fourth, intituled "An Act for amending and consolidating the Acts of Parliament for the Recovery of Small Debts in the City of London and the Liberties thereof, and for enabling the Goods of the Debtors to be taken in Execution," the various Acts then in force for establishing and regulating the Court of Requests in the City of London

for the recovery of small debts within the said city and the liberties thereof, and thereby severally recited, were repealed; and by the said Act certain persons therein named or referred to were nominated and appointed Commissioners of the said Court of Requests, to sit as usual in the said Court for the period and in the rotation therein mentioned; and by the said Act powers were granted for the establishment of the said Court, and for carrying on the business thereof: and whereas the City of London is a county of itself: and whereas the Sheriffs' Court of the City of London is a Court of ancient jurisdiction, having cognizance of all pleas of personal actions to any amount: and whereas it is expedient that the manner of proceeding in the said Court for the recovery of small debts and demands should be altered and regulated, and that the Court of Requests established under the said recited Act of Parliament should be abolished: May it therefore please your Majesty that it may be enacted; and be it enacted.

Book III. — SHERIFFS' COURT OF THE CITY OF LONDON.

I. The Court.

166. *Jurisdiction.*—The Act adopts almost *verbatim* the language of the 9 & 10 Vict. c. 95, s. 58, enacting that "all pleas of personal actions, when the debt or damage claimed is not more than twenty pounds, whether on balance of account or otherwise, which shall hereafter be commenced or tried in the Sheriffs' Court, shall be holden in the said Court without writ."

1. *The Court.*

10 & 11 Vict. c. lxxi. *Section* 1.

Actions to be hereafter commenced in the Sheriffs' Court, for sums not above 20*l.* to be heard and determined under the provisions of this Act.

Sect. 1. That all pleas of personal actions, where the debt or damage claimed is not more than twenty pounds whether on balance of account or otherwise, which shall hereafter be commenced or tried in the Sheriffs' Court, shall be holden in the said Court without writ, and shall be heard and determined in a summary way, and according to the provisions of this Act: provided always, that the said Court shall not, under the provisions of this Act, have cognizance of any action of ejectment, or in which, although the debt or damage claimed may not exceed twenty pounds the title to any corporeal or incorporeal hereditaments, or to any toll, fair, market, or franchise shall be in question, or in which the validity of any devise, bequest, or limitation under any will or settlement may be disputed, or in any action for any libel or

Book III. — Sheriffs' Court of the City of London. — 1. The Court.

slander, or for criminal conversation, or for seduction, or for breach of promise of marriage.

167. *Preservation of Jurisdiction in other Actions.*—The 2nd section excepts from the provisions of this Act "all pleas of personal actions, and all other proceedings in the Sheriffs' Court, except the trial" of the causes described in sect. 1.

Section 2. — All other actions and proceedings to be carried on as if this Act had not passed.

Sect. 2. Provided always, and be it enacted, that all pleas of personal actions, and all other proceedings in the Sheriffs' Court, except the trial, under the provisions of this Act, of pleas of personal actions where the debt or damage claimed is not more than twenty pounds, or, not being more than twenty pounds, is excepted from the provisions of this Act, shall and may be commenced and carried on in the said Court as if this Act had not been passed; and all proceedings in personal actions where the debt or damage claimed is not more than twenty pounds, which may have been actually commenced in the Sheriffs' Court before the commencement of this Act, and which might have been commenced in the said Court under the provisions of this Act, shall be continued, executed, and enforced against all persons liable thereto in the same manner as if they had been commenced therein under the provisions of this Act; and all other proceedings in the said Court, not being proceedings in personal actions where the debt or damage claimed is not more than twenty pounds and which could not have been commenced in the said Court under the provisions of this Act, shall be continued, executed, and enforced against all persons liable thereto in the same manner in all respects as they might have been continued, executed, and enforced in case this Act had not passed.

168. *Where Sheriffs' Court to be held.*—The 3rd and 36th sections provide for this.

Section 3. — Court to be held at Guildhall.

Sect. 3. And be it enacted, that the said Court shall, as well for the purposes of this Act as for all other purposes, be held at the Guildhall within the City of London, or at such other place within the said City as the Mayor, Aldermen, and Commons of the said city in common council assembled shall from time to time by any order direct or appoint.

And the 36th section, without alluding to Guildhall, requires the Court to be held wheresoever the Mayor, &c. shall have ordered.

1. *The Court.*

169. *When to be held.*—The time of holding the Court is to be appointed by the Mayor, Aldermen, and Commons. As with the County Courts, to render the proceedings valid, everything required by the statute must be rightly done. The Courts must be appointed by the same formal act by which all other proceedings of the corporation are authenticated, and, therefore, we presume, under the corporate seal, unless there is a custom to the contrary. And notice of the days on which they will be holden must be posted in some conspicuous place *in* the Court, and in the Clerk's office, and any alteration of the day of holding must be announced in like manner. This will be necessary to be done for every Court. It will be observed that the other provisions are applicable only to the first Court to be holden under the Act, and therefore they are now obsolete.

Section 4. — Mayor, &c. to appoint days and place for holding Court.

Sect. 4. And be it enacted, that it shall be lawful for the Mayor, Aldermen, and Commons from time to time to appoint the place and day or days for holding the Sheriffs' Court for the purposes of this Act; and the order for the first holding of the said Court for the purposes of this Act shall be published in two London daily morning newspapers, and shall be stuck up at the principal door or entrance of the said Guildhall, and shall be continued so stuck up for the period of one month at the least before the day appointed for the first holding the said Court.

And it is further enacted by sect. 36, as follows:

Section 36. — Judge to hold the Court where Mayor, &c. shall direct.

Sect. 36. And be it enacted, that the Judge of the Sheriffs' Court shall attend and hold the said Court for the purposes of this Act at the place where the Mayor, Aldermen, and Commons shall have ordered that the said Court shall be holden, at such times as they shall appoint for that purpose, so that a Court shall be holden for the purposes of this Act once at least in every calendar month; and notice of the days on which the Court will be holden for the purposes of this Act shall be put up in some conspicuous place in the Court and in the office of the Clerk of the Court, and no other notice thereof shall be needed; and whenever any day so appointed for holding the Court shall be altered, notice of such intended alteration, and

Notices for holding Courts to be put up in the Court and in the Clerk's office.

BOOK III.

SHERIFFS' COURT OF THE CITY OF LONDON.

of the time when it will take effect, shall be put up in some conspicuous place in the Court and in the Clerk's office.

170. *Abolition of Court of Requests.*—This is formally effected by sect. 5.

1. *The Court.*

Section 5.

After commencement of this Act existing Court of Requests to be abolished.

Sect. 5. And be it enacted, that from and after the commencement of this Act the said existing Court of Requests for the Recovery of Small Debts in the said city and the liberties thereof shall be abolished; and the said recited Act of Parliament of the Session held in the fifth and sixth years of the reign of His Majesty King William the Fourth shall be and the same is hereby repealed.

171. *Proceedings pending to be continued in this Court.*—Proceedings pending in the Court of Requests are to be continued in this Court. But the same questions might arise here as were suggested under the County Courts Act (see *ante*, pp. 14, 15).

Section 6.

All proceedings commenced under recited Act in Court of Requests to be continued in Sheriffs' Court under this Act.

Sect. 6. Provided always, and be it enacted, that all proceedings in the said Court of Requests, or otherwise in execution of the said recited Act, commenced before the commencement of this Act, shall be as valid to all intents and purposes as if this Act had not been passed, and may be continued, executed, and enforced in the Sheriffs' Court, under the provisions of this Act, against all persons liable thereto, in the same manner in all respects as if they had been commenced in the said Court under the provisions of this Act.

Court-houses.

172. *Court-houses.*—By sect. 29 the Mayor, Aldermen, and Commons are empowered to provide court-houses, for which purpose they are also empowered, by sect. 31, to purchase land under the provisions of the Lands Clauses Consolidation Act, and, by sect. 32, to borrow money for the purpose. It is unnecessary to give these sections at length; they are identical with the sections having the like objects in the County Courts Act, and the observations upon these will be applicable also to the City Court (see *ante*, p. 20). A general fund is to be provided from the fees for paying off any moneys so borrowed. (Sect. 33.)

173. *In whom Property to vest.*—Here, as in the County Courts, the property of the Court is to vest in the Treasurer for the time being. (Sect. 34.)

174. *Care of the Courts.*—The Clerk is to have the care of the court-house and offices, and to appoint and dismiss the necessary servants, and to make contracts for repairing, cleaning, lighting, furnishing, &c., and to supply them with law and office books and stationery; such charges to be paid out of the general fund of the Court; but they are to be first allowed *under the hand of the Judge.* (Sect. 35.)

Section 35.

If separate court-house established, the Clerk to have the charge thereof, and to appoint and dismiss servants, &c.

Sect. 35. And be it enacted, that if a separate court-house shall be built, purchased, or hired for the purposes of the Sheriffs' Court, the Clerk of the Court shall have the care of such court-house and offices of the Court, and shall appoint, and have power to dismiss, the necessary servants for taking charge of such court-house and offices, at such salaries as shall be from time to time authorized by the Judge, with the consent of the Mayor, Aldermen, and Commons; and the Clerk of the Court, under the direction of the Mayor, Aldermen, and Commons, and subject to such regulations as they may require to be enforced, shall in every case make all necessary contracts, or otherwise provide, for repairing and furnishing, and for cleaning, lighting, and warming the court-house for the time being and offices, and for supplying the said Court and offices with law and office books and stationery, and for defraying all other necessary expenses, not otherwise provided for, incident to the holding of the Court; and the charge of the court-house and offices, and expenses thereby incurred, shall be paid out of the general fund of the Court; provided always, that the Treasurer or Clerk of the Court, or the partner of such Treasurer or Clerk, or any person in the service or employment of such Treasurer or Clerk, shall not be directly or indirectly concerned or interested in any such contract, or in supplying any articles for the use of the Court and offices; provided also, that no payment of any such charge shall be allowed in the Clerk's accounts until allowed under the hand of the Judge.

The remarks on a similar section in the County Courts Act (*ante*, p. 56), are equally applicable here.

175. *Gaol.*—It is enacted, by section 30, that any gaol in the City of London may be used as a prison for the purposes of this Act.

BOOK III.

SHERIFFS' COURT OF THE CITY OF LONDON.

2. The Officers.

II. The Officers.

176. *The Judge.*—The Judge of the Sheriffs' Court is to preside.

Section 7.

Judge of Sheriffs' Court to preside in actions under this Act.

Sect. 7. And be it enacted, that the Judge of the Sheriffs' Court shall preside at the trial in the said Court of all actions and proceedings commenced or directed to be carried on therein under the provisions of this Act.

177. *Judge may appoint a Deputy.*—Section 8 empowers the Judge, in case of illness or unavoidable absence, *not occasioned by his other official duties*, to appoint a Deputy, who must be a person who *has practised as a barrister-at-law for at least seven years*, to act for him during *such* illness or unavoidable absence, but the cause of such appointment must be entered on the minutes of the Court, and care should be taken that this is rightly done.

If the Judge be unable to make such appointment, the Mayor, Aldermen, and Commons may do so in a formal manner.

But besides this power to appoint a Deputy in case of illness or unavoidable absence, not occasioned by other official duties, which must be made in the manner above described, a further power is given to the Judge, *with the approval of the Mayor, Aldermen, and Commons*, to appoint a Deputy (at any time, with or without cause), to act for the Judge for a time not exceeding *two calendar* months consecutively in twelve calendar months, and *such* Deputy may be a person who has practised as a barrister for *three* years. Why a *seven* years' barrister should be required in illness or unavoidable absence, and only a *three* years' barrister in an absence for pleasure or profit, it would be difficult to explain. But so it is.

Section 8.

Judge of Court may appoint a Deputy in case of illness, &c.

Sect. 8. And be it enacted, that in case of illness or unavoidable absence, not occasioned by his other official duties, the cause whereof shall be entered on the minutes of the Court, it shall be lawful for the Judge of the Sheriffs' Court, or, in case of the inability of the Judge to make such appointment, for the said Mayor, Aldermen, and Commons, to appoint some other

person, who shall have practised as a barrister-at-law for at least seven years, to act as the Deputy of such Judge during such illness or unavoidable absence; and it shall also be lawful for the Judge, with the approval of the said Mayor, Aldermen, and Commons, to appoint a Deputy, who shall have practised as a barrister for at least three years, to act for him for any time or times not exceeding in the whole two calendar months in any consecutive period of twelve calendar months; and every Deputy so appointed, during the time for which he shall be so appointed, shall have all the powers and privileges and perform all the duties of the Judge of the said Court.

178. *Treasurer.*—The Chamberlain of the City is to be the Treasurer of the Court for the purposes of this Act (sect. 9), and his clerks are to have an extra salary for performing the duties. (Sect. 10.)

Section 9. — Chamberlain to be Treasurer of Sheriffs' Court.

Sect. 9. And be it enacted, that the Chamberlain for the time being of the City of London shall, for the purposes of this Act, be and be considered as the Treasurer of the Sheriffs' Court.

Section 10. — Clerks, &c. in the Chamberlain's office to perform such duties in reference to the office of Treasurer as shall be required, and shall be paid an extra salary for the same.

Sect. 10. And be it enacted, that the several Clerks and other officers and servants for the time being employed in the office of the Chamberlain of the said city shall from time to time perform such duties in reference to the Court and the office of Treasurer thereof, hereby imposed on the said Chamberlain, as the Chamberlain for the time being in his character of Treasurer of the Court shall require; and every Clerk, officer, and servant of the Chamberlain, so employed in performing any of the duties of the Treasurer of the Court, shall receive and be paid by the said Mayor, Aldermen, and Commons, out of the general fund of the Court, such extra salary or allowance as a remuneration for their services as the said Mayor, Aldermen, and Commons shall from time to time think sufficient and proper.

179. *Duties of Treasurer.*—His duties are the same as in the County Courts. He is to "audit and settle the accounts of the Clerk and other officers of the Court," and to "receive the balance of the various moneys which such Clerk and other officers shall

BOOK III. — SHERIFFS' COURT OF THE CITY OF LONDON. — 2. The Officers.

have received under this Act;" to pay the Judge his fees, and make other payments directed by the Act, and carry the balance remaining in his hands "to such account as the Mayor, Aldermen, and Commons shall direct." (Sect. 25.) He is also required "once in every year, and oftener if required, on such day as the Mayor, &c. from time to time shall appoint," to render an account of his receipts and disbursements (sect. 26); and the Mayor, &c. are to make such rules as to them shall seem meet for the application of such balances, or for securing the same or other sums in the hands of any officer of the Court. (Sect. 27.)

180. *The Clerk.*—The Clerk is to be appointed by the Mayor, Aldermen, and Commons, and to be removable by them in case of inability or misbehaviour; he must be an attorney who has practised for five years.

Section 11.

Power to Mayor, &c. to appoint Chief Clerk, who shall be an attorney, and from time to time remove him.

Sect. 11. And be it enacted, that every Chief Clerk of the Court, to be hereafter appointed, shall be an attorney of one of Her Majesty's Superior Courts of Common Law, who shall have practised as an attorney for at least five years; and such Clerk shall be appointed by the said Mayor, Aldermen, and Commons; and in case of inability or misbehaviour of the Clerk for the time being of the Court, it shall be lawful for the said Mayor, Aldermen, and Commons to remove such Clerk, and to appoint some other person, qualified as aforesaid, to be Clerk of the Court; and, until otherwise directed by the said Mayor, Aldermen, and Commons, every such Clerk shall be paid by fees, as herein-after provided; and in case any Assistant Clerk or Clerks shall be necessary for carrying on the business of the Court, such Assistant Clerk or Clerks shall, during such time as the Chief Clerk shall be paid by fees, be provided and paid by the Chief Clerk of the Court, but if the Chief Clerk shall at any time be paid by a salary and not by fees, then the Assistant Clerk or Clerks shall be appointed by the said Mayor, Aldermen, and Commons, and shall be paid out of the general fund of the Court such yearly salary for their services as the said Mayor, Aldermen, and Commons shall from time to time think proper.

Clerk to be paid by fees.

Appointment of Assistant Clerks if necessary.

181. *Deputy Clerk.*—The Clerk, with the approval of the Judge, may, in case of illness or unavoidable absence, appoint a Deputy, "*qualified to be appointed Chief Clerk of the Court,*" to act for him; and if he be unable to appoint, the Judge may do so.

Section 12. — Chief Clerk, with approval of Judge, may appoint a Deputy in case of illness, &c.

Sect. 12. And be it enacted, that it shall be lawful for the Chief Clerk of the Court, with the approval of the Judge, or, in case of the inability of the Chief Clerk to make such appointment, for the Judge, from time to time to appoint a Deputy, qualified to be appointed Chief Clerk of the Court, to act for the Chief Clerk of the Court at any time when he shall be prevented by illness or unavoidable absence from acting in such office, and to remove such Deputy at his pleasure; and such Deputy, while acting under such appointment, shall have the like powers and privileges, and be subject to the like provisions, duties, and penalties for misbehaviour, as if he were the Chief Clerk of the Court for the time being.

The observations on a similar provision in the County Courts Act are equally applicable here (see *ante*, p. 79).

182. *Duties of Clerk.*—The duties of the Clerk are the same as in the County Courts. They are described in the 13th section as follows:

Section 13. — Duties of Clerks.

Sect. 13. And be it enacted, that the Clerk of the Court, with such Assistant Clerk or Clerks as aforesaid, in case any such shall be employed, shall issue all summonses, warrants, precepts, and writs of execution, and register all orders and judgments of the Court, and keep an account of all proceedings of the Court, and shall take charge of and keep an account of all court fees and fines payable or paid into Court, and of all moneys paid into and out of Court, and shall enter an account of all such fees, fines, and moneys in a book belonging to the Court, to be kept by him for that purpose, and shall from time to time, at such times as shall be directed by order of the Court, submit his accounts to be audited or settled by the Treasurer.

He is also to deliver to the Treasurer as often as required by him or by the Judge "a full account in writing of the fees received in the Court under the

authority of this Act, and a like account of all fines imposed by the Court under the provisions of this Act, and of the expenses of levying the same" (sect. 24), and to pay over to the Treasurer all "moneys remaining in his hands over and above his own fees, and such balance as he shall be allowed, *by order of the Court*, to retain for the current expenditure of the Court. (Sect. 24.) He is also to send to the Mayor, Aldermen, and Commons accounts of all sums of money paid by him to the Treasurer. (Sect. 28.)

183. *The Bailiff.*—One or more Bailiffs are to be appointed by the Mayor, Aldermen, and Commons. They may be removed for inability or misbehaviour by them, or by the Judge by order of Court.

Section 17. — Power to Mayor, &c. to appoint Bailiffs of the Court.

Sect. 17. And be it enacted, that there shall be one or more Bailiff or Bailiffs of the Court; and such Bailiff or Bailiffs shall be appointed by the said Mayor, Aldermen, and Commons; and, in case of the inability or misbehaviour of any such Bailiff or Bailiffs, it shall be lawful for the said Mayor, Aldermen, and Commons, or the Judge of the Court, by an order of Court, to remove such Bailiff or any of such Bailiffs; and one of the Bailiffs of the Court, if there shall be more than one, shall be called the Chief Bailiff of the Court.

184. *Duties of Bailiff.*—The duties of the Bailiff are stated in sect. 18 as follows:

Section 18. — Duties of the Bailiffs, &c.

Sect. 18. And be it enacted, that the said Bailiffs or one of them shall attend every sitting of the Court for such time as shall be required by the Judge, unless when their absence shall be allowed for reasonable cause by the Judge, and shall by themselves serve all the summonses and orders, and execute all the warrants, precepts, and writs, issued out of the Court under the provisions of this Act; and the said Bailiffs shall, in the execution of their duties conform to all such general rules as shall be from time to time made for regulating the proceedings of the Court as herein-after provided, and subject thereunto to the order and direction of the Judge; and the said Bailiffs shall be entitled to receive all fees and sums of money allowed by this Act in the name of fees payable to the Bailiff, out of which

they shall provide for the execution of the duties for which such fees are allowed, and for the payment of the Bailiffs according to such scale of remuneration as shall be from time to time approved by the Judge; and every such Bailiff shall be responsible for all the acts and defaults of himself, in like manner as the Sheriff of any county in England is responsible for the acts and defaults of himself and his officers.

BOOK III. — SHERIFFS' COURT OF THE CITY OF LONDON. — 2. *The Officers.*

185. *Offices not to be conjoined.*—This is provided by

Section 14. — Offices of Clerk, Treasurer, and Bailiff not to be conjoined.

Sect. 14. And be it enacted, that it shall not be lawful for the Clerk of the Court, or the partner of any such Clerk, or any person in the service or employment of any such Clerk or his partner, to act as Treasurer or as a Bailiff of the Court, or for the Treasurer, his partner or clerk, or any person in the service or employment of such Treasurer or his partner, to act as Clerk or as a Bailiff, or for any Bailiff, his partner or clerk, or any person in the service or employment of any Bailiff or his partner, to act as Clerk or Treasurer of the Court.

186. *Officers not to act as Attorneys in the Court.*—It is expressly forbidden by the 15th section to any officer to act either by himself or his partner as an attorney or agent in any proceeding in the Court. This is the language of the statute:

Section 15. — Clerk, &c. not to act as attorneys in the Court.

Sect. 15. And be it enacted, that no Clerk, Treasurer, Bailiff, or other officer of the Court shall, either by himself or his partner, be directly or indirectly engaged as attorney or agent for any party in any proceeding in the Court.

187. *Penalty for Nonobservance.*—For violating either of these provisions a penalty of 50*l.* is imposed by section 16.

Officers to give security.

188. *Officers to give Security.*—By sect. 20 the Treasurer, Clerk, and Bailiff, are required to give security for such sum and in such manner and form as the Mayor, &c. from time to time shall order, "for the due performance of their several offices and for the due accounting for and payment of all moneys received by them under this Act or which they may become liable to pay for any misbehaviour in their office."

BOOK III. — SHERIFFS' COURT OF THE CITY OF LONDON. — 2. The Officers. — Section 19.

189. *Officers of abolished Court to be appointed to this Court.*—This is provided by section 19 as follows:

Officers performing duties under recited Act may be appointed under this Act.

Sect. 19. Provided always, and be it enacted, that the persons holding the offices or performing the duties of Clerk, Assistant Clerk, Beadle, or Serjeant in the said Court of Requests under the said recited Act, at the time of the passing of this Act, and who shall continue respectively to hold the same offices or to perform the same duties at the time when the said Act shall be repealed under the provisions of this Act, whether or not qualified as herein-before provided, may, if the said Mayor, Aldermen, and Commons shall think fit, be appointed to be Clerks and Bailiffs of the Sheriffs' Court for the purposes of this Act, and, if so appointed, shall continue to execute their several offices, subject to the power of removal provided in this Act.

Officers may be paid by salaries instead of fees.

190. *Officers may be paid by Salaries instead of Fees.*—The 23rd section provides that the Mayor, Aldermen, and Commons may order the officers or any of them to be paid by salaries instead of fees "or in any manner other than is provided by this Act." But no officer is to be entitled to compensation for any loss of fees or emoluments by reason of ceasing to hold his office, or to receive the fees allowed by the Act, or on account of his emoluments being affected by such alteration, unless he had been previously an officer of the abolished Court of Requests; in which case he is to be entitled to such compensation as he would have been had he lost his office or emoluments by the passing of this Act. "And in such case all sums payable in the name of fees to such officers of the Court as shall be paid by salaries shall be paid from time to time to the Treasurer of the Court, who shall pay the said several salaries out of the proceeds of such fees, and the surplus shall form part of the general fund of the Court; and whenever the net amount of the fees shall not be sufficient to pay the said several salaries, the deficiency shall be made good and paid out of the corporate funds of the said city, or such of them as the said Mayor, Aldermen, and Commons shall think proper and direct."

Compensation.

191. *Compensation to Persons whose Emoluments may be affected.*—The 22nd section provides compen-

sation for persons who having been entitled "to any office or to any fees or salary for his services in the execution of the said repealed Act (the Court of Requests) shall be deprived of them by the passing of this Act, unless they shall be appointed to any office of equal value under this Act." But if appointed to an office of less value he may claim compensation for the difference of value. (Sect. 22.)

III. Fees and Fee-Fund.

3. *Fees and Fee-Fund.*

192. *Fees.*—As the fees will probably be subjected to considerable alterations ere long, we shall in this place merely cite the section relating to them and give the Tables, if amended, in the chapter that will be devoted to the subject of Fees, when we come to treat of the *Practice of the County Courts.*

Section 21.

Fees to be taken according to schedule (A.) to this Act, and tables to be exhibited in conspicuous places.

Sect. 21. And be it enacted, that on every proceeding in the Court under the provisions of this Act there shall be payable to the Judge, Clerk, and Bailiffs of the Court such fees as are set down in the schedule marked (A.) to this Act annexed, or which shall be set down in any schedule of fees reduced or altered under the power herein-after contained for that purpose, and none other; and a table of such fees shall be put up in some conspicuous place in the place where the Court shall be held, and in the Clerk's office; and the fees on every proceeding shall be paid in the first instance by the plaintiff or party on whose behalf such proceeding is to be had on or before such proceeding, and in default of payment thereof shall be enforced by order of the Judge by such ways and means as any debt or damage ordered to be paid by the Court can be recovered; and the fees upon execution shall be paid into Court at the time of the issue of the warrant of execution, and shall be paid by the Clerk of the Court to the Bailiff upon the return of the warrant of execution, and not before: provided always, that it shall be lawful for the Mayor, Aldermen, and Commons to lessen the amount of the fees to be taken in the Court under the provisions of this Act, in such manner as to them shall seem fit, and again to increase such fees so that the scale of fees given in the schedule to this Act be not in any case surpassed; and in case the fees allowed to be taken by the Judge, Clerk, or Bailiffs of the Court shall appear to the said Mayor.

BOOK III. — SHERIFFS' COURT OF THE CITY OF LONDON.

Aldermen, and Commons to be more than sufficient, it shall be lawful for the Mayor, Aldermen, and Commons to order that a certain part of their fees only shall be paid to them respectively, as the greatest salaries to be by them respectively received; and in such case, and so long as such direction shall be in force, the amount of the residue of the fees shall be accounted for and paid to the Treasurer of the Court for the purposes of this Act, and shall form part of the general fund of the Court.

IV. RECORD OF THE COURT.

4. Record of the Court.

193. *Minutes of Proceedings to be kept.*—The clerk is to enter the proceedings of the Court in a book to be kept at the office, and copies of such entries under the seal of the Court are "to be admitted in all Courts and places whatsoever as evidence of such entries, and of the proceeding referred to by such entry or entries, and of the regularity of such proceeding, without any further proof." (Sect. 96.) For the forms of such Minute Book and Certificate see *ante*, pp. 99, 101.

Section 96. — Minutes of proceedings to be kept, and, when certified by the Clerk, to be evidence.

Sect. 96. And be it enacted, that the Clerk of the Court shall cause a note of all plaints and summonses, and of all orders, and of all judgments and executions, and returns thereto, and of all fines, and of all other proceedings of the Court, to be fairly entered from time to time in a book belonging to the Court, which shall be kept at the office of the Court; and such entries in the said book, or a copy thereof bearing the seal of the Court, and purporting to be signed and certified as a true copy by the Clerk of the Court, shall at all times be admitted in all Courts and places whatsoever as evidence of such entries, and of the proceeding referred to by such entry or entries, and of the regularity of such proceeding, without any further proof.

194. *Unclaimed Moneys.*—If any suitors' moneys remain unclaimed for six years they are to go and be applied to the general fund. (Sect. 97.)

V. CONDUCT OF THE COURT AND OFFICERS.

5. Conduct of the Court and Officers.

Very nearly the same provisions are made for preserving the order of the Court and protecting the officers against vexatious actions, and for punishment

of misconduct by them as in the County Courts, and consequently the comments and cases cited when treating of them will be found equally applicable to the provisions of the statute now under consideration. It will not be necessary to do more here than present the sections *verbatim.*

Section 98. — Power of committal for contempt.

Sect. 98. And be it enacted, that if any person shall wilfully insult the Judge, or any Juror, or any Bailiff, Clerk, or officer of the Court for the time being, during his sitting or attendance in Court, or in going to or returning from the Court, or shall wilfully interrupt the proceedings of the Court, or otherwise misbehave in Court, it shall be lawful for any Bailiff or officer of the Court, with or without the assistance of any other person, by the order of the Judge, to take such offender into custody, and detain him until the rising of the Court; and the Judge shall be empowered, if he shall think fit, by a warrant under his hand, and sealed with the seal of the Court, to commit any such offender to any prison to which he has power to commit offenders under this Act, for any time not exceeding seven days, or to impose upon any such offender a fine not exceeding five pounds for every such offence, and in default of payment thereof to commit the offender to any such prison as aforesaid for any time not exceeding seven days, unless the said fine be sooner paid.

Section 99. — Penalty for assaulting Bailiffs, or rescuing goods taken in execution.

Sect. 99. And be it enacted, that if any officer or Bailiff of the Court shall be assaulted while in the execution of his duty, or if any rescue shall be made or attempted to be made of any goods levied under process of the Court, the person so offending shall be liable to a fine not exceeding five pounds, to be recovered by order of the Court, or before a Justice of the Peace, as herein-after provided; and it shall be lawful for the Bailiff of the Court, or any peace officer, in any such case to take the offender into custody (with or without warrant), and bring him before such Court or Justice accordingly.

Section 100. — Bailiffs made answerable for escapes and neglect

Sect. 100. And be it enacted, that in case any Bailiff of the Court who shall be employed to levy any execution against goods and chattels shall, by neglect or connivance or omission, lose the opportunity of levying any such execution, then, upon

BOOK III. — SHERIFFS' COURT OF THE CITY OF LONDON. — 5. *Conduct of the Court and Officers.* — to levy execution.

complaint of the party aggrieved by reason of such neglect, connivance, or omission, (and the fact alleged being proved to the satisfaction of the Court on the oath of any credible witness,) the Judge shall order such Bailiff to pay such damages as it shall appear that the plaintiff has sustained thereby, not exceeding in any case the sum of money for which the said execution issued; and the Bailiff shall be liable thereto, and upon demand made thereof, and on his refusal so to pay and satisfy the same, payment thereof shall be enforced by such ways and means as are herein provided for enforcing a judgment recovered in the Court.

Section 101. — Remedies against and penalties on Bailiffs and other officers for misconduct.

Sect. 101. And be it enacted, that if any Clerk, Bailiff, or officer of the Court, acting under colour or pretence of the process of the Court, shall be charged with extortion or misconduct, or with not duly paying or accounting for any money levied by him under the authority of this Act, it shall be lawful for the Judge to inquire into such matter in a summary way, and for that purpose to summon and enforce the attendance of all necessary parties, in like manner as the attendance of witnesses in any case may be enforced, and to make such order thereupon for the repayment of any money extorted, or for the due payment of any money so levied as aforesaid, and for the payment of such damages and costs, as he shall think just, and also, if he shall think fit, to impose such fine upon the Clerk, Bailiff, or officer, not exceeding ten pounds for each offence, as he shall deem adequate; and in default of payment of any money so ordered to be paid payment of the same may be enforced by such ways and means as are herein provided for enforcing a judgment recovered in the Court.

Section 102. — Penalty on officers taking fees besides those allowed.

Sect. 102. And be it enacted, that every Treasurer, Clerk, Bailiff, or other officer employed in putting this Act or any of the powers thereof in execution, who shall wilfully and corruptly exact, take, or accept any fee or reward whatsoever, other than and except such fees as are or shall be appointed and allowed respectively as aforesaid, for or on account of any thing done or to be done by virtue of this Act, or on any account whatsoever relative to putting this Act into execution, shall, upon proof thereof before the said Court, be for ever incapable of serving

or being employed under this Act in any office of profit or emolument, and shall also be liable for damages as herein provided.

5. *Conduct of the Court and Officers.*

Section 103.

Claims as to goods taken in execution to be adjudicated in Court.

Sect. 103. And be it enacted, that if any claim shall be made to or in respect of any goods or chattels taken in execution under the process of the Court, or in respect of the proceeds or value thereof, by any landlord for rent, or by any person not being the party against whom such process has issued, it shall be lawful for the Clerk of the Court, upon application of the officer charged with the execution of such process, as well before as after any action brought against such officer, to issue a summons calling before the Court as well the party issuing such process as the party making such claim, and thereupon any action which shall have been brought in any of Her Majesty's Superior Courts of Record, or in any local or Inferior Court, in respect of such claim, shall be stayed; and the Court in which such action shall have been brought, or any Judge thereof, on proof of the issue of such summons, and that the goods and chattels were so taken in execution, may order the party bringing such action to pay the costs of all proceedings had upon such action after the issue of such summons out of the Court holden under the provisions of this Act; and the Judge of the Court shall adjudicate upon such claim, and make such order between the parties in respect thereof, and of the costs of the proceedings, as to him shall seem fit; and such order shall be enforced in like manner as any order made in any suit brought in such Court.

Section 122.

Limitation of actions for proceedings in execution of this Act.

Sect. 122. And for the protection of persons acting in the execution of this Act, be it enacted, that all actions and prosecutions to be commenced against any person for any thing done in pursuance of this Act shall be laid and tried in the county where the fact was committed, and shall be commenced within three calendar months after the fact committed, and not afterwards or otherwise; and notice in writing of such action and of the cause thereof shall be given to the defendant one calendar month at least before the commencement of the action; and no plaintiff shall recover in any such action if tender of sufficient amends shall have been made before such action brought, or if,

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after action brought, a sufficient sum of money shall have been paid into Court, with costs, by or on behalf of the defendant.

5. *Conduct of the Court and Officers.*

Section 123.

Provision for the protection of officers of the Court.

Sect. 123. And be it enacted, that if any person shall bring any suit in any of Her Majesty's Superior Courts of Record in respect of any grievance committed by any Clerk, Bailiff, or officer in the Court holden under the provisions of this Act, under colour or pretence of the process of the said Court, and the Jury, upon the trial of the action, shall not find greater damages for the plaintiff than the sum of twenty pounds, no costs shall be awarded to the plaintiff in such action, unless the Judge shall certify in Court upon the back of the record that the action was fit to be brought in such Superior Court.

VI. Jurisdiction.

6. *Jurisdiction.*

Almost all the questions relating to the Jurisdiction will arise also under the similar provisions of the County Courts Act, which will come to be considered in the next Book, and whither the reader is referred for information upon the subject. But there remain two or three provisions peculiar to this Court which may be more conveniently noticed here.

195. *Acts 7 & 8 Vict. c. 96, and 8 & 9 Vict. c. 127, not to extend to this Act.*—This is provided by the 38th section.

Section 38.

Acts 7 & 8 Vict. c. 96, and 8 & 9 Vict. c. 127, not to extend to this Act.

Sect. 38. And be it enacted, that none of the provisions and enactments of an Act passed in the eighth year of the reign of Her present Majesty, intituled "An Act to amend the Laws of Insolvency, Bankruptcy, and Execution," or of an Act passed in the ninth year of the reign of Her said Majesty, intituled "An Act for the better securing the Payment of Small Debts," shall extend or relate to or affect the jurisdiction and practice of the Sheriffs' Court in any action or proceeding to be commenced or carried on therein under the powers and provisions of this Act.

196. *Summonses may issue though Cause of Action did not arise in the City.*—It will suffice to give jurisdiction to this Court, that

1. The defendant, or one of the defendants, shall dwell within the City.

6. *Jurisdiction.*

2. The defendant, or one of the defendants, shall carry on business there at the time of action brought.
3. That defendant, or one of the defendants, shall have dwelt therein at some time within six calendar months next before the time of action brought.
4. That defendant, or one of the defendants, shall have carried on his business therein at some time within six calendar months next before the time of action brought.
5. If the cause of action arose therein.

It is remarkable that there is not here, as in the County Courts Act, the proviso that summons shall issue by *leave of the Court*, where the cause of action arose, but defendant does not reside, within the jurisdiction. Hence the traders of the City are spared the species of outlawry to which the traders of Westminster have been subjected through the refusal of the Judge to issue a summons out of the district. That which the inhabitants on one side of Temple Bar are denied, when asked as a favour, the inhabitants on the other side can demand *as a right*. This is the language of the statute:

Section 40.

Summons may issue, though cause of action may not arise in the City.

Sect. 40. And be it enacted, that such summons may issue, provided the defendant or one of the defendants shall dwell or carry on his business within the City of London or the liberties thereof at the time of the action brought, or provided the defendant or one of the defendants shall have dwelt or carried on his business therein at some time within six calendar months next before the time of the action brought, or if the cause of action arose therein.

197. *Extra-parochial Places, &c.*—Provision is made for these by sect. 41 as follows:

Section 41.

Precincts, &c. within the City of London, &c. to be deemed parts thereof.

Sect. 41. And be it enacted, that all precincts and extra-parochial places within the City of London or the liberties thereof, or adjoining thereto, shall, for the purposes of this Act, be deemed to be parts of the City of London and the liberties thereof.

198. *Service of Processes out of the District.*—Processes issuing out of this Court into any County Court

BOOK III. — SHERIFFS' COURT OF THE CITY OF LONDON. — 6. *Jurisdiction.*

district may be served by the Bailiff of such latter Court (sect. 42), and proof of such service is to be "by affidavit purporting to be sworn before any Judge of a County Court, or a Master Extraordinary in Chancery, or any person now authorized by law to take affidavits, and the fee for taking such affidavit shall not be more than 1*s.* and shall be costs in the cause." (Sect. 44.)

Section 42. — Processes out of district of Court may be served by Bailiff of any other Court. 9 & 10 Vict. c. 95.

Sect. 42. And be it enacted, that any summons or other process which under this Act shall be required to be served out of the City of London or the liberties thereof may be served by the Bailiff of any Court holden in any part of England, under an Act passed in the ninth and tenth years of the reign of Her present Majesty, intituled "An Act for the more easy Recovery of Small Debts and Demands in England," and such service shall be as valid as if the same had been made under the provisions of this Act by the Bailiff of the Sheriffs' Court within the City of London or the liberties thereof.

199. *Service of Processes issuing into the City of London from the County Courts.*—These are to be served by the Bailiff.

Section 43. — As to service of process of County Courts in the City of London.

Sect. 43. And be it enacted, that any summons or other process which under the before-mentioned Act for the more easy Recovery of Small Debts and Demands in England and Wales shall be required to be served out of the district of the Court from which the same shall have issued may be served within the City of London or the liberties thereof by the Bailiff of the Sheriffs' Court; and such service shall be as valid as if the same had been made by the Bailiff of the Court out of which such summons or other process shall have issued within the jurisdiction of the Court for which he acts.

VII. REMOVAL OF SUITS.

7. *Removal of Suits.* — *Section* 74.

200. *Plaints not to be removed.*—It is enacted by sect. 74 thus:

No actions to be removed into the Lord Mayor's

Sect. 74. And be it enacted, that no plaint entered in the Court under the provisions of this Act, or by this Act directed to be continued therein, shall in any case be removed or re-

Book III.

Sheriffs' Court of the City of London.

7. *Removal of Suits.*

Court, or the Court of Hustings, or to be heard before the Lord Mayor by markment, &c.

movable from the Court by writ of *levetur querela*, or any other writ or process, into the Court of our Lady the Queen holden before the Lord Mayor and Aldermen in the Chamber of the Guildhall of the City of London, or into the Court of Hustings in the City of London, nor be liable to be re-heard or examined by the Lord Mayor of the City of London by markment or other customary process.

VIII. Court of Hustings and Lord Mayor's Court.

8. *Court of Hustings, &c.*

Section 124.

Act not to affect Court of Hustings or Lord Mayor's Court.

It is provided by sect. 124 thus:

Sect. 124. And be it enacted, that nothing in this Act contained shall be construed to alter or affect the Court of Hustings in the said City of London, or the Court of our Lady the Queen holden before the Lord Mayor and Aldermen in the Chamber of the Guildhall of the City of London, or to take away, lessen, or diminish the powers and jurisdictions of the said Courts or either of them.

Upon this section Mr. Pulling, the author of the very learned and valuable treatise on the *Laws and Customs of the City of London* has remarked, in a commentary upon this statute contributed to the *County Courts Chronicle*, that "it will, therefore, in cases arising within the City of London, remain optional with the claimant of a sum not exceeding 20*l.* either to proceed under the new Act of Parliament, or to resort to the former jurisdiction of the City Courts, or rather the Lord Mayor's Court, and the old Sheriffs' Courts, noticed in sect. 2, the Court of Hustings being in a great degree fallen into disuse.

"The mode of proceeding in the old City Courts is of a peculiar nature, and it is far from our purpose to attempt to describe it here. Those who are interested in the matter will find information on the subject in the chapter on the 'City Courts,' in Pulling's *Laws and Customs of London*. The recent case of *Reg.* v. *The Mayor of London*, reported in 16 Law J. (N. S.) 185, Q. B., and 8 Law T. 536, decided on the right of all attorneys to practise in these Courts, on the construction of the 6 & 7 Vict. c. 73, s. 27; and it is probable that in the event of the Exchequer Chamber confirming the judgment of the Queen's Bench, the

Lord Mayor's Court will be extensively resorted to in cases under 20*l.*, not only on account of the more liberal rate of remuneration allowed to the practitioner, but in order to secure the advantage of a more deliberate judgment than that which a Small Debt Court jurisdiction is usually capable of affording; to which considerations should be added the peculiar remedies by way of attachment and sequestration against the debtor's property which the ancient jurisdiction of the City Courts affords. It is worthy of remark also, that the provisions of the 7 & 8 Vict. c. 96, and 8 & 9 Vict. c. 127, which are repealed as to the County Courts, 9 & 10 Vict. c. 95, s. 6, and the City Small Debts Court, sect. 38, may still be put in force in the Lord Mayor's Court, or the old Sheriffs' Courts of the City, as 'Inferior Courts of Record for the Recovery of Debts,' within the meaning of the 8 & 9 Vict. c. 127, s. 1, and the creditor proceed by summons, and under that Act, against his debtor in those Courts, in cases of judgments or orders for payment of sums less than 20*l.* besides costs, in *any Court of competent jurisdiction in England;* and that consequently in case of parties residing within the City, against whom orders or judgments have been obtained, in *any form of action or suit*, the creditor has the option of proceeding by way of summons, &c. in one of the old City Courts.

"It is probable, therefore, that the effect of the Act just passed with respect to the City of London will be, that the jurisdiction in the more important cases included in the Act will be divided between the New Court and the Lord Mayor's Court. There must, however, remain a very vast jurisdiction for the New Court, considering the thousands of debts that are daily incurred in sums under 20*l.* within the limits of the City of London, and the thousands of parties who become liable to be sued in the New Court either by carrying on their business there, or by *giving rise to a cause of action within the limits.*"

IX. Procedure.

9. *Procedure.* In the County Courts, the forms of procedure are to be framed by the Judges of the Superior Courts. But, in the City Court, they are, by sects. 60, 61, to be framed by the Recorder, Common Serjeant, and

Judge of the Sheriffs' Court, subject to approval by the Chief Justice.

Book III. — SHERIFFS' COURT OF THE CITY OF LONDON. — 9. *Procedure.* — *Section* 60. — Forms of procedure in Courts to be framed by the Recorder, &c.

Sect. 60. And be it enacted, that the Recorder for the time being of the said City, the Common Serjeant for the time being of the said City, and the Judge for the time being of the Sheriffs' Court, shall have power and they are hereby required from time to time to make and issue all the general rules for regulating the practice and proceedings of the Court, and also to frame forms for every proceeding in the Court for which they shall think it necessary that a form be provided, and also for keeping all books, entries, and accounts to be kept by the Clerk of the Court, and from time to time to alter any such rules or forms, and the rules so made and the forms so framed shall be observed and used in the Court; and in any case not expressly provided for herein or by the said rules, the general principles of practice in the Superior Courts of Common Law may be adopted and applied, at the discretion of the Judge, to actions and proceedings in the Court under the provisions of this Act.

Section 61. — Forms of procedure to be approved by the Chief Justices.

Sect. 61. Provided always, and be it enacted, that no such general rules and forms shall be in force until the same shall have been approved by the Lord Chief Justice of the Court of Queen's Bench, the Lord Chief Justice of the Court of Common Pleas, and the Lord Chief Baron of the Court of Exchequer, or one of them.

With very trifling exceptions, the other provisions of this statute are identical with those of the County Courts Act, and the same rules and forms of procedure have been adopted. It is therefore unnecessary to describe them here. The practitioner will be pleased to understand that, throughout the rest of this treatise, the Law, Practice, and Forms are *applicable* to the Sheriffs' Court of London equally with the County Courts, *unless otherwise noted.*

BOOK IV.

THE JURISDICTION.

BOOK IV. THE JURISDICTION.

In deciding all doubtful questions of Jurisdiction it will be necessary to refer to the purposes of the County Courts Act, as stated in the preamble. The material portion of it, after reciting certain statutes relating to Courts for the Recovery of Small Debts, proceeds thus: "And it is expedient that the provisions of such Acts should be amended, and that one rule and manner of proceeding for the Recovery of Small Debts and Demands should prevail throughout England: and whereas the County Court is a Court of ancient jurisdiction, having cognizance of all pleas of personal actions to any amount, by virtue of a writ of *justicies* issued in that behalf; and whereas the proceedings in the County Courts are dilatory and expensive, and it is expedient to alter and regulate the manner of proceeding in the said Courts for the Recovery of Small Debts and Demands, and that the Courts established under the recited Acts of Parliament, or such of them as ought to be continued, should be holden after the passing of this Act as branches of the County Court under the provisions of this Act, and that power should be given to Her Majesty to effect these changes at such times and in such manner as may be deemed expedient by Her Majesty, and with the advice of her Privy Council, &c." (Sect. 1.)

201. *Definition of the Jurisdiction.*—The 3rd section enacts, that every Court to be holden under this Act shall have "all the jurisdiction and powers of the County Court for the recovery of debts and demands, as altered by this Act, throughout the whole district for which it is holden." (Sect. 3.)

202. *Judges.*—"There shall be a Judge *for each district* to be created under this Act." (Sect. 3.) For the review of a question which has arisen upon this provision see *ante*, p. 37.

203. *Courts may be holden simultaneously.*—Although *a* County Court, it is expressly provided that it "may be holden simultaneously in all or any of such districts." (Sect. 3.)

204. *To be a Court of Record.*—It is also enacted, by the same section, that "every Court holden under this Act shall be a Court of Record." (Sect. 3.)

The following is the language of this very important section:

Section 3. — Courts held under this Act to have the same jurisdiction as County Courts, and to be Courts of Record.

Sect. 3. And be it enacted, that every Court to be holden under this Act shall have all the jurisdiction and powers of the County Court for the Recovery of Debts and Demands, as altered by this Act, throughout the whole district for which it is holden, and there shall be a Judge for each district to be created under this Act, and the County Court may be holden simultaneously in all or any of such districts; and every Court holden under this Act shall be a Court of Record.

205. *Where the Courts shall be holden.*—The Judge of each district is, by section 56, directed to attend and hold the County Court at each place where it shall have been directed to be holden within his district, at such times as he shall appoint for that purpose. (Sect. 56.)

206. *When the Courts shall be holden.*—The County Court is directed by the same section to be "holden in every such place (*i. e.* where it has been directed by the Queen to be so holden) once at least in every calendar month, or such other interval as one of Her Majesty's principal Secretaries of State shall in each

BOOK IV. THE JURISDICTION.

case order, and notice of the days on which the Court will be holden shall be put up in some conspicuous place in the court-house and in the office of the Clerk of the Court, and no other notice thereof shall be needed; and whenever any day so appointed for holding the Court shall be altered, notice of such intended alteration and of the time when it will take effect, shall be put up in some conspicuous place in the court-house and in the Clerk's office." (Sect. 56.)

All the acts required by the statute to be done previously to the holding of a County Court must be carefully observed or its proceedings may be open to question. The following is a tabular list of the ingredients necessary to constitute a valid County Court:

1. It must be holden *at the place* ordered by the Queen in Council.

2. Notice of the days on which the Court will be holden is to be put up in some conspicuous place *in* the court-house.

3. A similar notice must be put up in the office of the Clerk of the Court.

4. If any alteration be made in the day so appointed notice of such intended alteration and of the time when it will take place is to be put up in some conspicuous place in the court-house, and in the Clerk's office.

The section is as follows:

Section 56.

Judge to hold the Court where Her Majesty shall direct.

Sect. 56. And be it enacted, that the Judge of each district shall attend and hold the County Court at each place where Her Majesty shall have ordered that the County Court shall be holden within his district at such times as he shall appoint for that purpose, so that a Court shall be holden in every such place once at least in every calendar month, or such other interval as one of Her Majesty's principal Secretaries of State shall in each case order; and notice of the days on which the Court will be holden shall be put up in some conspicuous place in the court-house and in the office of the Clerk of the Court, and no other notice thereof shall be needed; and whenever any day so appointed for holding the Court shall be altered, notice of such intended alteration, and of the time when it will take effect, shall be put up in some conspicuous place in the court-house and in the Clerk's office.

Notices for holding Courts to be put up in a conspicuous place.

We will now proceed to the examination of the Jurisdiction of the County Courts, under the following appropriate divisions:

I. As to Locality.
II. As to Subject-Matter.
III. As to Parties.
IV. As to Proceedings.
V. As to Officers.
VI. As to the Public.

CAP. I.

AS TO LOCALITY.

207. *Jurisdiction to extend over the whole District.*—It is enacted by sect. 3, that "every Court to be holden under this Act shall have all the jurisdiction and powers of the County Court for the Recovery of Debts and Demands, as altered by this Act, throughout the whole district for which it is holden." All the powers and jurisdiction vested in the old County Courts are thus transferred to and are possessed by the new County Courts, subject to such modifications as the statute has introduced; therefore, if there be any question as to jurisdiction or power under the provisions of the County Courts Act, it will be necessary to refer to the law and practice of the old County Courts, in order to ascertain if THEY possessed the power or jurisdiction in question, for if it had been previously possessed by them, it will still be possessed by the new Courts, unless it be expressly abolished or modified by the statute.

Jurisdiction extends over the whole county.

A doubt has been suggested by some commentators as to the limit of the jurisdiction of each Court, in consequence of the singular confusion in the use of the terms "County Court" and "District" in the Orders in Council, and in different parts of the statute. But we can discover no valid ground for doubt, as affecting the present question, although it might certainly be raised in others. The statute gives power to the Queen in Council to divide "the whole or any part of any county" into districts, and to alter the same from time to time, and "if it shall appear to Her Majesty that any part of any county, &c. may conveniently be declared within the jurisdiction of the County Court of an adjoining county, it shall be lawful for Her Majesty, with the advice aforesaid, *to order that such part shall be taken to be within the jurisdiction of the County Court holden for the purposes of this Act for such adjoining county in and for*

such district as Her Majesty shall order, in like manner as if it were part of such adjoining county:" (sect. 2.) The Order in Council adopting this provision distributed the country into districts, and ordered that parts of certain counties should be attached to adjoining counties for the purpose of forming districts, and, being so attached, they become, by virtue of the statute, for all the purposes of the statute, parts of the county to which they are annexed, and within the jurisdiction of its County Court.

Adjoining counties.

The doubt has also been suggested whether, if it should ever become necessary to refer to the jurisdiction and powers of the old County Court, in order to determine what is the power and jurisdiction of the new County Court, upon a matter occurring within a portion of one county which has been annexed to the district of another, such jurisdiction and powers of the old County Court would extend beyond the limits of the county into the portion of another county so annexed. But any difficulty that might have arisen from the confused language of the statute is in this respect, as it appears to us, entirely removed by the explicit terms of section 3, enacting that "every Court to be holden under this Act shall have all the jurisdiction of the County Court for the recovery of debts and demands, as altered by this Act, *throughout the whole district for which it is holden.*"

The result of the whole of the provision relating to the constitution of the Courts and their jurisdiction, may, perhaps, be thus stated. The statute empowers the Queen in Council to divide the counties into convenient districts, and to annex parts of one county to another, by which process the portions so annexed are to become, for the purposes of the statute, portions of the county to which they are transferred. It also directs that a Judge and other officers shall be appointed to, and a Court held within, each of such districts. It then transfers to the district Courts thus constructed the jurisdiction and powers of the County Court, and constitutes all the districts in each county the County Court of that county, holden at different places, the style of each being "The County Court of A. holden at B."

Exceptions.

208. *Exceptions.*—But the statute has excepted

BOOK IV. THE JURISDICTION. — Cap. 1. As to Locality.

certain localities from its operation. Thus, it is not to affect the rights of the Universities of Oxford or Cambridge, nor the Courts of the Lord Warden of the Stannaries, by the following sections:

Section 140. — Act not to affect rights of Universities of Oxford or Cambridge.

Sect. 140. Provided always, and be it enacted, that nothing in this Act contained shall be construed to alter or affect the rights or privileges of the Chancellor, Masters, and Scholars of the Universities of Oxford or Cambridge respectively as by law possessed, or the jurisdiction of the Courts of the Chancellors or Vice-Chancellors of the said Universities, as holden under the respective charters of the said Universities, or otherwise.

Section 141. — Nothing to affect the Courts of the Wardens of the Stannaries.

Sect. 141. Provided always, and be it declared and enacted, that nothing in this Act contained shall be construed to affect the Courts of the Lord Warden or of the Vice-Warden of the Stannaries of Cornwall; but this provision shall not be deemed to prevent the establishment of any Court under this Act within the said Stannaries, or to limit or affect the jurisdiction of any Court so established under this Act.

Palace Court.

209. The Palace Court has been abolished by 12 & 13 Vict. c. 101, s. 13.

Liberty of the Rolls.

210. *Liberty of the Rolls.*—One question only has yet arisen as to the boundary of a district. This was in the case of *Fowler* v. *Eardley* (1 C. C. Chron. 199), and raised the curious point whether the Liberty of the Rolls is within the jurisdiction of the Westminster County Court. Its importance requires that it be given entire.

Fowler v. *Eardley* (1 C. C. Chron. 199).

This was an action brought by the plaintiff on a bill of exchange to recover 17*l.* 8*s.* from the defendant, living in Rolls-buildings, Fetter-lane.

O'Brien, counsel for the defendant, took an objection to the jurisdiction of the Court, on the ground that the defendant's residence was in the City of London.

The JUDGE said, if that was so, he certainly could not entertain the case; but he was aware that a portion of Rolls-buildings was in the Westminster County Court district, and the defendant's house might be within it.

Fowler Eardley (1 C. C. Chron. 199).

O'Brien said, he was aware that the county and the City of London joined in that place, for he was engaged in a case before the Recorder in which the house was proved to be half in the City and half in the county of Middlesex.

The JUDGE.—No doubt: for the boundary of the Cities of London and Westminster passes through Child's banking-house at Temple-bar. The Temple itself was not wholly in the City of London, but was extra-parochial, and whether it was within the jurisdiction of the City Small Debts Court or the jurisdiction of that Court was a question. So also was the Liberty of the Rolls. Looking at the Order in Council defining the boundaries of the several County Courts, he was of opinion that both a portion of the Temple and the Liberty of the Rolls were within his district. The Order in Council stated that the "Westminster Court district should include all within a line drawn from the point where the Cities of London and Westminster meet on the river Thames, along the boundary of the City of London to Holborn-bars, thence along the middle of Holborn to Oxford-street, &c." Now it was clear that the jurisdiction of that Court extended to the City walls on the west side, including all the extra-parochial places lying without the city and liberty of Westminster, and the boundary of the City of London. On reference to the 41st section of the 10 & 11 Vict. (the City Small Debts Act), it was enacted, "that all precints and extra-parochial places within the City of London, or the liberties thereof, or adjoining thereto, shall for the purposes of this Act be deemed to be parts of the City of London and the liberties thereof." Although this was so clear, he understood that the Judge of the City Small Debts Courts would not assume jurisdiction beyond the boundary of the City, so that the Temple and the Liberty of the Rolls were exempt from the jurisdiction of the County Courts Act.

Book IV. The Jurisdiction. — Cap. 1. As to Locality.

Under the 95th section of the County Courts Act there was no doubt about his having jurisdiction over extra-parochial places adjoining the City of London: but it was a question whether the subsequent Act did not take away from him that power. He was, however, of opinion that no harm could come to the people living in those extra-parochial places, being subject to the jurisdiction of both Courts.—After some further remarks the case was adjourned for an interview with the Judge of the City Court, and to have the boundary of the two cities clearly defined; and judgment was accordingly given for the plaintiff.

211. *Jurisdiction beyond the District.*—In certain cases a jurisdiction is given beyond the limits of the district by section 60, as follows:

Section 60. — Summons may issue though cause of action may not arise in the district.

Sect. 60. And be it enacted, that such summons may issue in any district in which the defendant or one of the defendants shall dwell or carry on his business at the time of the action brought; or, by leave of the Court for the district in which the defendant or one of the defendants shall have dwelt or carried on his business, at some time within six calendar months next before the time of the action brought, or in which the cause of action arose, such summons may issue in either of such last-mentioned Courts.

It will be observed that there are two modes of obtaining summonses; 1st, of right; 2nd, by leave of the Court.

The cases in which the summons may be obtained of right are

Where summons to issue.

1st. Where the defendants, or one of them, dwells within the district.

2nd. Where the defendants, or one of them, carries on his business there.

The cases in which the summons can issue only by *leave of the Court* are—

1st. Where the defendants, or one of them, do not now, but shall have dwelt within the district, at some time within six calendar months next before the time of the action brought.

As to Locality.

2nd. Where the defendants, or one of them, do not now dwell or carry on business within the district, but shall have carried on business there at some time within six calendar months next before the time of action brought.

3rd. Where the cause of action arose within the district.

The first class of cases, those in which the summons may be had of right, requires no other remark than this. It may be a question whether the expression "carries on *his* business," would be applicable to the case of a person carrying on business for another, as a shopman, for instance.

Summons by leave of the Court.

But, upon the other class of cases, those in which the summons can be had only by leave of the Court, there has been much discussion and difference; it will, therefore, require some consideration.

There can be no doubt as to the cases for which this was intended to be a provision. It continually happens that persons contract debts with parties resident at a distance from them: especially does this occur in the metropolis, to which residents in the country are in the habit of transmitting their orders. It would have been an exceeding hardship, and would have detracted materially from the purpose for which the County Courts were established, if for such cases they had provided no remedy, or if the plaintiff had been compelled to go down with his witnesses into the country to the district where his debtor dwells, in order to recover his debt. Therefore it was wisely provided in the County Courts Act that the action *might*, by leave of the Judge, be brought in the district where the cause of action arose: and in the City Courts Act that power is given absolutely and is not subject to any permission.

But, inasmuch as such a power might be abused by unprincipled plaintiffs, if it could be exercised of right and summonses were issued to distant places as readily as in cases where the defendant is resident

BOOK IV. THE JURISDICTION. — Cap. 1. As to Locality. — Summonses out of the district.

within the district, the Legislature in this first statute imposed in such cases the further provision that a summons out of the district should be had only "by leave of the Court."

We have heard of no exception to the practice of issuing summonses out of the district, the Courts only requiring to be assured that the cause of action really arose within the district; and this is done either by affidavit or declaration, or by examination on oath in open Court. Several cases on this point are reported. In *Lloyd* v. *Williams* (1 Cox & Macrae, 29), Mr. JOHNES, the Judge of the Cardiganshire County Court, held, that "leave must be obtained on application grounded on an affidavit or declaration stating the grounds for the application, taken before a Judge of a County Court, or a Master Extraordinary in Chancery, or a Commissioner of a Superior Court," and he afterwards framed the following general order:

Lloyd v. *Williams* (1 Cox & Macrae, 29).

"It is ordered that application for leave to issue a summons out of the district in which defendant dwells or carries on his business, must be attended by an affidavit or declaration setting forth the causes on which such application is based."

Jones v. *Meyrick* (1 Cox & Macrae, 33).

Another rule laid down by the same Court in the case of *Jones* v. *Meyrick* (1 Cox & Macrae, 33), was, that wherever the witnesses are resident in the district, or the costs of trial would be less there than by suing in the district where defendant resides, leave would be given to issue the summons, but not otherwise. Again, in the case of *Prothero* v. *Prothero* (1 Cox & Macrae, 34), where application was made to the same learned Judge to frame a general order that affidavits and declarations on which to found applications for summonses out of the district might be made to the Clerk, to avoid the delay and inconvenience of applying to the Court, he is reported to have said "the leave must be that of the Judge himself, so I read the 60th section. It is a judicial act of the Court; and I think it must be done in each case by the Judge

Prothero v. *Prothero* (1 Cox & Macrae, 34).

sitting in Court." To this the Editor has appended the following note:

"This is doubtless the right construction of section 60, and the right rule of practice; but we learn that in many of the Courts it has been greatly relaxed, so that summonses are issued into foreign districts as a matter of course on a mere statement to the Clerk. The language of the statute is very explicit:—'Be it enacted, that such summons may issue in any district in which the defendant or one of the defendants shall dwell or carry on his business at the time of the action brought; or, *by leave of the Court* for the district in which the defendant or one of the defendants shall have dwelt or carried on his business, at some time within six calendar months next before the time of the action brought, or on which the cause of action arose, such summons may issue in either of such last-mentioned Courts.' The language is permissive in both cases, the words '*may issue*,' being applied to both. The addition of the words 'by leave of the Court,' to the one class of summonses only, shows that something more is to be done than a mere permission accorded as a matter of course. The Judge is to do a *judicial* act, and he must base this upon a *hearing* either of an affidavit or of the party, and he must satisfy himself that the facts are such as to justify the issuing of a summons to a defendant out of his jurisdiction. The practice now generally adopted is that of an application, upon an affidavit or declaration of the merits, and an order that such summons shall issue."

Summonses out of the district.

In the Cumberland Court, in the case of *Winder* v. *Story* (1 C. C. Chron. 46), it was determined that the order for a summons to issue into another district should set forth the application for leave to sue, and the fact that it was granted, and should be served, with the summons, upon the defendant.

Winder v. *Story* (1 C. C. Chron. 46).

These cases are cited to show that the Courts exercise the power with which they are vested of

BOOK IV. THE JURISDICTION. — Cap. 1. As to Locality. — Summonses out of the district.

bringing defendants resident in other districts within their jurisdiction, where the cause of action has arisen within their own district; but that various rules have been adopted for its regulation, with a view to the prevention of any improper use being made of the privilege by unprincipled plaintiffs. It is very desirable that the Judges should adopt uniformity of practice in this particular, for, at present, almost every Court has its own rules, some going so far as to require the deposit of a sum to meet the defendant's costs, should the claim fail to be established; others requiring the plaintiff to prove his demand upon oath in open Court; others again being satisfied with a declaration, or an affidavit; and some permitting the Clerk to issue such summonses *mero motû* upon the plaintiff's statement, and without any verification of it. It appears to us that the two extremes equally err. All that should be required is reasonable assurance that the debt or demand is *bonâ fide*, and that may usually be secured by a declaration or affidavit setting forth the nature of the claim; the time and place at which it accrued; the present residence of the defendant, and that it might be more cheaply and conveniently heard in the Court to which the application is made than in any other. The form of such a declaration, and the other proceedings connected with the issuing of such a summons, will be described in their proper place, in the division devoted to THE PRACTICE OF THE COURTS.

It may, however, be noted here, as a point requiring attention, that a summons out of the district, issuing "by leave of the Court," must be an act of "the Court," and not of the Judge; that is to say, the Judge has no power to give such leave, except in open Court, constituted and sitting *as a Court;* hence it cannot be issued by the Clerk at his office, upon a general permission given by the Judge to issue such summonses at *his* (the Clerk's) discretion; for it has been held that an authority given to one of the Superior Courts, by the title of "the Court," cannot be exercised by a single Judge (*Geach* v. *Coppin*, 3 Dowl. 74); even if the Court expressly delegate to him its authority (*Jones* v. *Fitzaddams*, 2 Dowl. 111.)

Another important question arises out of this power given to the Court. If the Judge refuse to exercise it, is there any remedy for the suitor? Or, if he hear and decide, is that decision final?

The only form of remedy in such case would be by *mandamus*. Now the rule is, that a *mandamus* will not go to compel a Judge to use a power, the exercise of which is discretionary, but only where, having used it, he uses it wrongly. Is this, then, a *discretionary* power, or only one which is *to be used with discretion?* In other words, is it the intent of the statute that the Judge should exercise a discretion whether he should grant leave for the issue of such summonses at all, or was it intended that he should exercise his discretion only in determining if the facts were established that entitled the plaintiff to the leave asked, as, if the defendant *had* dwelt in the district, or the cause of action *did* arise there?

The power to issue summonses out of the district not discretionary.

In the absence of any decision upon this point, looking to the objects of the statute, to the nature of the cases for which it is evidently a provision, to the consequences of any other interpretation, and to the language of the Act, we entertain no doubt that it is *not* discretionary with the Judge whether he shall exercise such power at all. Where such an absolute discretion is vested, the terms usually employed are much stronger; "if he shall see fit" is the technical expression commonly used in such case. The language of the section under consideration is "by leave of the Court" "such summons may issue." It may be said, perhaps, that the term *may* issue would imply a discretionary power, but this objection is met by examination of the preceding provision in the same section, with reference to the issue of summonses where the defendant *is* within the jurisdiction, and where no previous leave is required; and it would scarcely be contended that it was in the discretion of the Judge to issue or refuse it in that case, or that, if he were to withhold it, a *mandamus* would not go to compel its issue: the only question is, whether the proviso contained in the words "by leave of the Court" makes that dependent upon the *arbitrary* will of the Judge, which, without them, would have been clearly compulsory. It appears to

us that it is a precautionary and not a discretionary power; that the Judge has no right to say, "I will not exercise it at all;" but he must hear and decide upon the particular circumstances of each case.

District in which defendant dwells.

212. *District in which Defendant dwells.*—The summons is to issue, that is, jurisdiction is given, in *the district in which defendant dwells.* The question has not yet arisen, but it is very likely to arise, as to what will constitute *dwelling* within the district. There are two other terms, almost synonymous, which have been the subject of repeated discussion and decision, and to which reference must be made for the definition of this one. The term *inhabit* has been much considered in the law of settlement; the term *reside* in the law of elections, and the decisions upon them would probably rule any case that may arise upon the definition of the term "*dwell*" in this Act.

The first test of a man's dwelling-place is, "where does he sleep?" In *R.* v. *Martin* (R. & R. 108), it was held by all the Judges that a shop and a private parlor where a man carried on business and entertained his friends, but neither himself nor his servants slept there, was not his dwelling-house; and the sleeping there must not be accidental, but with an intent to make it his abode. Thus, if, in the case last cited, on some night one of the visitors for a frolic had turned the key in the door, so that the master could not go out, and was thus compelled to sleep there against his will, this would not have constituted the place his dwelling-house. But it is not necessary that he should sleep personally in his dwelling to constitute it such; it will suffice that his family or servants sleep there *with a view to abode, and not merely to protect the property:* (*R.* v. *Flannagan*, R. & R. 187.) Thus, it was held by all the Judges, that when a man has two houses, and servants in both, and lives sometimes in one and sometimes in the other, both will be his dwelling-houses: (Co. Rep. 389.) And during his temporary absence, such house, although empty, if there be the *animus revertendi,* will yet be his dwelling-house: (*Rex* v. *Murry,* 2 East, P. C. 496.) But otherwise

if he have not an intention of returning, even though he have established no dwelling elsewhere: (*Nutbrown's case*, 2 East, P. C. 496.)

What is the dwelling-place of a defendant.

On the other hand, he may sleep in one place without necessarily being a resident there in law; for the residence of the wife is *primâ facie* the residence of the husband; and if a man have a family and household dwelling in one place, and he occupy a house and occasionally sleep in another, he will not be a resident in the latter place, for his residence is his domicile; and his domicile is his home; and his home is where his family resides: (*Story's Conflict of Laws*, *s.* 43; *R.* v. *The Duke of Richmond*, 6 T. R. 561.)

And the dwelling must be of free will to constitute a *residence*. Being sent to a prison in a place, or being put to school there, will not make it the dwelling of the party, or constitute him an inhabitant. Thus, where a pauper settled in a parish met with an accident, and was sent into another parish, it was held not to be a "going to inhabit" within the meaning of the term in the Poor Law Act, 13 Car. 2, c. 12, which implied free will: (*R.* v. *St. Lawrence Ludlow*, 4 B. & Ald. 662.)

Upon a careful review of all the cases, upon the question of inhabitancy, whether for the purpose of settlement or of the elective franchise, it appears impossible to draw any distinct definition: each case must be decided upon its facts. But, probably, the points which it will be necessary to establish are

1st. That the "dwelling" is *bonâ fide*.

2nd. That, although it may be constructive, as by a family or servants, or even the possession of a domicile, which is not actually used, there must be a reasonable intention to reside while there, and a clear *animus revertendi* while absent.

Good inhabitancy.

In election committees the following have been held to constitute *good inhabitancy*:—A solicitor living out of the borough, but having offices within it, which he attended daily, and a sleeping-room which he had not but might have slept in: (*Jeffrey's case, in the Shrewsbury Committee*, Feb. 12, 22.) A farmer, who had business in town, and because it was too far to walk to his house took lodgings and frequently slept there: (*Southern's case, ibid.* March 16.) A rector of a parish in S., but no residence there, being

also incumbent of another thirty-two miles off, where he lived, but had lodgings by the week for two months at the time of the election, where he had slept two nights, and for three months the year before, and attended visitations: (*Blateway's case, ibid.* Feb. 13.) Counsel usually residing in London, but coming down regularly to the Assizes, and in the long vacation, and had lodgings, till he stayed at his brother's, where he kept law books, transacted professional business, &c.: (*Benyon's case, ibid.* Feb. 16.)

Bad inhabitancy.

The following, among others, were held *not* to constitute *inhabitancy*:—Voters living at a distance with their families, and coming to sleep only a night or two before the election: (*Emery's case, ibid.* Feb. 10.) Farmers living with their families at a distance, coming to the town on market days only, and sleeping there without agreement for lodgings: (*Clarke's case, ibid.* Feb. 16.) A farmer living at a distance, formerly a currier in the town, but who had left for a year and a half, giving up the business to his son, with whom he occasionally lodged, but under no agreement: (*Bearall's case, ibid.* March 16.)

The term *inhabit*, however, varies in its import according to the subject to which it is applied (see Abbott, C. J. 4 B. & C 778); and so, it may be presumed, does the term "*dwell.*" COKE, indeed, draws a distinction between the words, and plainly asserts that a man may dwell in one place and be an inhabitant of another. "Although a man may be dwelling in a house in a foreign country, city, &c. yet if he hath lands or tenements in his own possession or insurance, in the county, riding, or city, &c. where the decayed bridge is, he is *an inhabitant*, both where his person dwelleth and where he hath lands and tenements in his own possession within the statute," &c.: (2 Inst. 702.) And again, "Every person that *dwelleth* in any shire, town, &c. though he hath but a personal *residence*, is said to be an inhabitant or *dweller* therein, as servants," &c.: (2 Inst. 703.) A person is an *inhabitant and dweller*, though he never lodged within the hundred, but held lands there: (*Leigh* v. *Chapman*, 2 Saund. 423.) An occupier of a tenement in a parish paying rates and carrying on the trade of a printer there, frequenting the house daily on working days, but not sleeping there, is not liable to serve the office of constable, as

not being *resident: (Reg.* v. *Adlard,* 4 B. & C. 778.) If a man hath a house within two leets, he shall be taken to be conversant where his bed is: (2 Inst. 122.) But, for the purposes of the poor-rate, the word means a person residing permanently and sleeping in the parish: (12 E. 330.)

From a consideration of all the cases, the following general rules may be deduced:

Meaning of the term "to dwell."

1. That the terms *inhabit* and *dwell,* although very similar, are *not* synonymous.

2. That the meaning of either is to be construed according to the subject in relation to which it is employed.

3. That *inhabitancy* is not a personal qualification.

4. That to be "*a dweller*" in a place is a personal qualification.

5. That every *dweller* is an *inhabitant*; but every *inhabitant* is *not* necessarily "a *dweller.*"

6. That to constitute "a *dweller*" in a place, it must be a man's *abode;* he must have a *bonâ fide* domicile there, which he must use as such, or, if absent, keep possession of with an *animus revertendi.*

7. But it is not necessary that it should be his *only* dwelling-place, or that he should *personally* occupy a domicile there. He may have two dwellings in different places; he may be indefinitely absent, provided his family and servants reside there, and he may continue to be a dweller though *absent,* if he possess a dwelling-place to which he *might* return, if he should have the *intention* to return, and that intention must exist.

But, inasmuch as the term "*to dwell,*" like the term "*to inhabit*" (per Abbott, C. J., 4 B. & C. 778), would probably be held to vary in its import according to the subject to which it is applied, it is necessary to consider what will be the reasonable interpretation of it as employed in the 60th section of the County Courts Act.

This being a remedial statute "for the more easy recovery of small debts and demands," it is to be construed liberally, and, in case of doubt, in the manner that will best accomplish the object of the statute. The term "dwell" will, therefore, be read here in its widest signification, and that embraces a *constructive* as well as an *actual* personal residence. If, therefore, a man have a domicile within the district,

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even although he may live, for the most part, in another district, or if his family live there though he be absent, or if he keep a domicile there and be absent for a considerable time, provided there be the *animus revertendi*, an action may be brought against him in the Court of such district, under section 60.

Absent defendants.

Provision against possible injustice from proceedings taken against an absent defendant has been made by the Rules of Practice relating to the service of the summons, which is required to be either personal or "by delivering the same to some person at the place of abode or place of business of the defendant," (rule 7); by providing special forms of service in particular cases, by rules 8, 9, and 10; and by requiring that "in all cases where a summons to appear to a plaint shall not have been served personally, and the defendant shall not appear at the return day, it must be proved to the satisfaction of the Judge that the service of such summons has come to the knowledge of the defendant ten clear days before the said return day:" (rule 11.)

Service of summons not necessary to give jurisdiction.

But the service of the summons has been held not to be necessary to give jurisdiction, which proceeds from the *cause of action*; that is to say, that the jurisdiction of the Court attaches from the moment when a cause of action arises within it, and the process of plaint and summons is only an exercise of that jurisdiction; and, consequently, that the Superior Courts will not take cognizance of anything done by the Judge in pursuance of such jurisdiction, even if he decide wrongly in law or in fact. His discretion is, therefore, absolute as to what he shall consider to be sufficient proof of the summons having been properly served and brought to defendant's knowledge: (*Robinson* v. *Lenaghan*, 1 C. C. Chron. 260; 12 Jur. 399; 11 Law T. 129; *Zohrab* v. *Smith*, 1 C. C. Chron. 262; 11 Law T. 133.)

Robinson v. *Lenaghen* (1 C.C.Chron 260).

Zohrab v. *Smith* (1 C.C. Chron. 262).

But inasmuch as, to bring a cause of action within the jurisdiction of the County Court, certain conditions must exist, one of which we are now considering, if in any case an action be brought in any district on the assumption that the defendant was dwelling within it, the principle of the cases last cited would not be applicable to a question whether he does or does not dwell there, for that is necessary to give jurisdiction, and therefore the Superior Courts

will review the facts to see that jurisdiction is rightly had, and, if not found, will order a *prohibition*. And so, it is presumed, that if a County Court should refuse to receive a plaint as not being within its jurisdiction, the Superior Court would entertain the question whether the case was or was not within the jurisdiction, and, if of opinion that it was so, would grant a *mandamus*.

It is worthy of note that, although by the statute (sect. 60) the action lies where the defendant *dwells*, by the rule (7) the summons must be served at the defendant's "*place of abode.*" This confirms the view we have taken of the *large* meaning of the term "*to dwell.*" Hence, although a defendant may *dwell* in one district so as to require an action to be brought against him there, it *may* become necessary to serve the summons upon him in some other district where he has his *place of abode*.

But this will be considered fully when we come to treat of the Service of Summonses in the *Practice* of the Courts.

Where defendant carries on his business.

213. *Where Defendant shall carry on his Business.*—What is a carrying on of his business, so as to bring a defendant within the jurisdiction, is entirely a question of fact. In the Law of Bankruptcy alone has the meaning of the term been at all considered. It is remarkable that the expression used is "shall carry on *his* business." Hence it may be inferred that it must be carried on upon his own account, and not as servant to another.

And any profession, trade, or calling, *conducted for profit* will suffice. And it must be *as a calling*, and not as an accidental or occasional occupation, and with intent to pursue it; but if there be that intention the amount of business carried on is of no importance: (see Montague & Ayrton, vol. 1.) And it is equally "his business" if it be an illegal one, as that of a smuggler: (*Cobb* v. *Symonds*, 8 Dow. & R. 11.)

Where cause of action arose.

214. *In which the Cause of Action arose.*—Jurisdiction is also given by the 60th section to the Court in whose district the *cause of action* arose, and this brings us to the question, What is a cause of action? which has now received a formal judicial interpretation.

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It will not now be necessary to reproduce the stores of legal learning and ingenious argument that were brought to bear upon the elucidation of the question, what in law constituted a cause of action. The Court of Exchequer has settled the point by giving to the term a different interpretation as employed in the County Courts Act, from its ordinary legal signification. In the case of *Grimbley* v. *Aykroyd* (1 Cox & Macrae, 79), the point was raised, indeed, under another section (the 63rd) which prohibits the division of "any cause of action for the purpose of bringing two or more suits." But to the same term the same meaning will be attached whenever it occurs in the same statute, unless the context compels a different construction.

In the above case, which will be a leading one upon the point, the term "cause of action" was thus defined by POLLOCK, C. B. in delivering the judgment of the Court:

Grimbley v. *Aykroyd* (1 Cox & Macrae 79).

"What, then, is the construction of the words 'cause of action?' The term 'debt' or 'damage' here is not used, as it is in the passage already cited from 4 Inst. 266, but the more extensive term adopted is 'cause of action.' This term, 'cause of action,' did not necessarily mean 'a cause of action' on one single entire contract, for there may be one cause of action on several debts contracted at different times, and in by far the greater number of cases a count in *indebitatus assumpsit*, or debt, is founded on many distinct contracts, as was pointed out in the case of *Hesketh* v. *Fawcett* (1 M. & W. 360), and one count might be considered as one cause of action. To provide that one cause of action on one entire contract should not be divided would be unnecessary and surplusage, and although the argument that a clause in an Act of Parliament, if understood in one sense would be inoperative, and in another sense would be operative, is not by any means conclusive, because it could not but be admitted that clauses are often introduced into an Act of Parliament *ex abundanti cautelâ*, yet it is of some weight, and the probability was that the Legislature, in enacting that a 'cause of action' should not be divided, meant a 'cause of action' which, but for that enactment, would be divisible. And when it is considered to what abuses the narrower con-

struction of this term might lead (which is strongly exemplified in the present case, in which 228 actions have been commenced, and 3,000 might have been brought), we think we may safely conclude that the term 'cause of action,' ought to be interpreted 'cause of one action,' and not be limited to an action on 'one separate contract.' But, on the other hand, if the term is to comprise all sums that might be included in one count, as debt for work and labour, for goods sold, and for occupation, which, though totally unconnected with each other, might be included in one *indebitatus* count, they would be precluded from being divided under this particular clause, and if indivisible, and the creditor brought an action for only one part, he would virtually abandon all claim to the remainder by the operation of the latter part of the 63rd section. In such a case Mr. Justice Coleridge had held that a similar clause in the Brighton Court of Requests Act, 3 & 4 Vict. c. 10, s. 24, did not apply. In that case the demand had been for three distinct things, a horse sold, for goods sold, and for rent; but he made a distinction between that case and one where a debtor has a bill running on from day to day: (*Neale* v. *Ellis*, 1 Dowl. & L. 163; 12 L. J., Q. B. 329.) In such a case, though each item of goods supplied, or work done, constituted a separate contract, so that after the stipulated price became due, the tradesman could sue for one item, yet the understanding is undoubtedly that the several items shall be united, and so form one entire demand; and, doubtless, if, after several items have been added to the first, the tradesman were to bring a separate action for each item, as for a distinct debt, a Superior Court would stigmatise such a proceeding as vexatious. It appears, then, that a great inconvenience would follow, if the term 'cause of action' were interpreted to mean 'cause of action' on one separate contract; and also if the construction were to be that it was intended to cover all contracts executed, however dissimilar in character, that could be included in one *indebitatus* count, which, according to the modern practice, may comprise any number of separate unconnected contracts, whenever made, each having ended in a debt before the commencement of the suit. As some extension must be given to the former construction, some restriction must

What is a cause of action.

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be put on the latter; and we think we ought to hold that the 63rd clause does apply to the former cases; whether it applies to all debts which could be comprised in one description, in one count, as for goods sold or not, the Court need not, in the present instance, determine; but, at all events, to the case of tradesmen's bills, in which one item is connected with another in this sense, that the dealing is not intended to terminate with one contract, but to be continuous, so that one item, if not paid, shall be united with another, and form one entire demand."

This important case will be again reviewed when we come to consider the subject of splitting demands, in a subsequent chapter.

Where cause of action arose

But, although this definition satisfactorily disposes of the interpretation of the term "cause of action," as applicable to dividing demands, it involves in extreme doubt and difficulty the application of the term under the 60th section, permitting the action to be brought in the district in which the cause of action arose; for, says the Court of Exchequer, "this term does not necessarily mean a cause of action on one single entire contract, for there may be one cause of action on several debts, contracted at different times. * * * We may conclude that the term 'cause of action' ought to be interpreted *cause of one action*, and not to be limited to an action on one separate contract." Such being the meaning of the term, how is the jurisdiction to be determined under section 60? Where, for instance, a tradesman's bill consists of many items, for goods delivered, or work done, part in one Court District, and part in another, in which must the action be brought, or must there be a distinct action in each district for so much of the "cause" as may have arisen within it;—or, if the case of *Grimbley* v. *Aykroyd* is to rule the interpretation of the term, and by "the cause of action" is to be intended "the whole demand," is that to be construed to have arisen in the district where the last item was contracted, and might an action be there maintained for the whole account? This is a practical difficulty not at all unlikely to arise, and we can suggest no other solution of it than this, that the whole account being held to be "the cause of action," and not the particular items, and as the account did

not become *a whole* until the last item was added, the locality of that last item will determine the jurisdiction of the whole, because it is for the whole that the action accrues, and into the whole that the particular items are merged.

Bills of exchange, &c.

215. *Bills of Exchange, &c.*—There are, however, certain subject-matters of personal action, in which it becomes very difficult to determine where the cause of action arose. In the instance of bills of exchange and promissory notes, it has been suggested that, inasmuch as they have no *locality*, they are altogether exempted from the jurisdiction of the County Courts, and may be sued upon in the Superior Courts, although for sums not exceeding 20*l.* The Act, it was said, applies to contracts that have a locality, as is manifested by section 128, which exempts from the jurisdiction of the County Courts causes of action that did not "arise wholly or in some material point within the jurisdiction, &c." and that in contemplation of law, a bill of exchange has no locality. But COLERIDGE, J., held it to be clearly within the jurisdiction of the County Courts: "I think unless you (the defendant) can show that the cause of action did not arise within the jurisdiction, that it must be considered to have attached: (*Nind* v. *Rhodes*, 1 C. C. Chron.; 11 Law T. 133.)

Nind v. *Rhodes* (11 Law T. 133).

Still the question remains undetermined in what district the cause of action on a bill of exchange or a promissory note may be said to have arisen. Is it where it was drawn, or where accepted, or where presented? Probably it would be held to be in either: but the safest course will be to bring it in the district where the defendant dwells or carries on his business (*ante*, p. 191), which would avoid any difficulty as to jurisdiction. If, however, it should be desirable to sue in a district more convenient to the plaintiff, perhaps the proper course will be to consider where *the right* of action was given by *the party sued*, which, in the case of the drawer, would be in the district where it was drawn, in that of the acceptor where it was accepted, in that of the indorsor where it was indorsed—the cause of action, *as against each*, being the *act* of drawing, accepting, or indorsing.

Goods sold and delivered.

216. *Goods sold and delivered.*—Other questions of even more difficulty have arisen, and will arise, with

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Where cause of action arose.

Goods sold and delivered.

respect to the locality of the cause of action in case of goods sold; in what district should the action be brought under such circumstances as the following?

1st. Where plaintiff resides in one district and defendant in another. Defendant orders goods which plaintiff delivers at defendant's residence. Should the action be brought where the order was received, or where the goods were delivered, or may it be brought in either, at the option of the plaintiff? Construing the term "cause of action" as *the demand*, it would appear that the demand does not arise until delivery, and consequently that the action must be brought where the goods are delivered.

2nd. But this will be modified by the particular terms of the contract, express or implied. If the plaintiff undertakes to deliver, the contract is not complete, so as to support an action, until actual delivery. But there are many cases in which the delivery is implied by law from the acts of the parties, as by breaking bulk, &c. In such cases the action must be brought in the district where such constructive delivery took place.

3rd. The delivery may be to an agent, and in such case the place of such delivery will determine the jurisdiction. Thus, delivery to a carrier is delivery to the defendant, unless the plaintiff has expressly or impliedly contracted to deliver to the defendant personally, and in the absence of an express agreement this will be determined by the usual course of dealing. And for that purpose the General Post-office is a carrier, and if the defendant request the goods to be so sent, the cause of action will, it is presumed, arise, and the action itself should be brought in the district where the packet was delivered to the Post-office. (*a*)

Whitehead v. *Barker* (1C.C.Chron. 106).

Two or three cases only have, as yet, occurred in the County Courts in which this question has been raised, and none in the Superior Courts. In the case of *Whitehead* v. *Barker* (1 C. C. Chron. 106), before Mr. HARDEN, in the Cheshire County Court, the plaintiff was nonsuited, because it was proved that

(*a*) Hence we think it probable that the newsmen and newspaper proprietors in London might sue their resident debtors in the country in the Sheriffs' Court of the City of London, for papers delivered at the General Post-office.

although the goods were *ordered* within the district, they were *delivered* to the plaintiff's servant in another district, and should be sued for where delivered. And in the Yorkshire County Court it was decided by Mr. WHARTON, in the case of *Jackson* v. *Lascelles* (1 C. C. Chron. 175), in which defendant living in one district had ordered goods by letter of the plaintiff in another district, directing them to be sent by railway, that delivery to the railway office, which was within the district, was a delivery to the defendant, and that the Court had jurisdiction.

Jackson v. *Lascelles* (1 C.C. Chron. 175).

217. *Other Actions.*—It is difficult to anticipate the many causes of action in which the same question is likely to arise. It will suffice to note that in which it has arisen.

Other actions.

In the case of an action by a carrier for the carriage of goods, in the Westmoreland County Court, it was held by Mr. INGHAM that where goods were delivered to a carrier at Brough to be conveyed to Darlington, the cause of action arose on the delivery of the goods to him at Brough, inasmuch as he would have been liable to an action for breach of contract if he had failed to carry them to Darlington, and therefore that the action was well brought in the district within which Brough lay: (*Rudd* v. *Chambers*, 1 C. C. Chron. 127.)

Rudd v. *Chambers* (1 C.C. Chron. 127).

218. *Concurrent Jurisdiction of the Superior Courts.*—A concurrent jurisdiction is, by sect. 128, given to the Superior Courts in the following cases:

Concurrent jurisdiction of the Superior Courts.

1st. Where plaintiff dwells more than twenty miles from the defendant.

2nd. Where the cause of action did not arise wholly or in some material point within the jurisdiction of the Court within which the defendant dwells or carries on his business at the time of the action brought.

3rd. Where any officer of the County Court shall be a party, except in respect of any claim to any goods and chattels taken in execution of the process of the Court, or the proceeds or value thereof.

The following is the section *verbatim* :

Section 128. — Concurrent jurisdiction

Sect. 128. And be it enacted, that all actions and proceedings which before the passing of this Act might have been

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with Superior Courts.

brought in any of Her Majesty's Superior Courts of Record where the plaintiff dwells more than twenty miles from the defendant, or where the cause of action did not arise wholly or in some material point within the jurisdiction of the Court within which the defendant dwells or carries on his business at the time of the action brought, or where any officer of the County Court shall be a party, except in respect of any claim to any goods and chattels taken in execution of the process of the Court, or the proceeds or value thereof, may be brought and determined in any such Superior Court, at the election of the party suing or proceeding, as if this Act had not been passed.

1. Where plaintiff dwells more than twenty miles from defendant.

219. 1st. *Where Plaintiff dwells more than Twenty Miles from Defendant.*—The distance is to be measured by the nearest practicable public highway. In case of doubt as to distance the safest course will be to avoid the question by suing in the County Court instead of in the Superior Court.

2. Where cause of action did not arise within the Court where defendant dwells.

220. 2nd. *Where the Cause of Action did not arise, &c. within the Jurisdiction of the Court where Defendant dwells, &c.*—What is a cause of action has been already considered (*ante*, p. 196). But upon other provisions, as applicable to bills of exchange, an important and interesting question has been raised and decided in the Superior Courts. It is the case of *Nind* v. *Rhodes* (1 C. C. Chron.; 11 Law T. 133), in the Bail Court, before Mr. Justice COLERIDGE. A rule had been obtained calling upon the plaintiff to show cause why a suggestion should not be entered to deprive him of costs. The action was upon a bill of exchange for less than 20*l.*, and both the parties resided within the district of the Clerkenwell County Court. It went off ultimately upon a different point, but the question was raised and decided as to the jurisdiction in the case of bills of exchange.

Nind v. *Rhodes* (1 C.C.Chron. 11 Law T. 133).

Lush contended that bills of exchange are not within the provisions of the Act, inasmuch as the idea of *locality* does not attach to them; that the whole scope of the Act applies to contracts which may be said to have a locality, which is manifested by the language of sect. 128, which exempts from the jurisdiction of the County Court causes of action which "did not arise wholly or in some material point within the

jurisdiction of the Court within which the defendant dwells," &c.; that in contemplation of law a bill of exchange has no locality, for which reason the venue in such an action cannot be changed.

Nind v. Rhodes (1 C.C.Chron. 11 Law T. 133).

Barstow, contrà, contended that the words in the section being in themselves sufficiently large to include bills of exchange, and the object of the Legislature being to bring within the jurisdiction of the County Court all small pecuniary demands, there being no substantial reason why bills of exchange should be excluded, the Legislature having carefully pointed out what kinds of claims shall not be adjudicated upon in the County Courts, and not having in terms excluded bills of exchange, although, from the language of sect. 97, it is clear that such securities were not lost sight of, it must be gathered that they were not intended to be exempt from the jurisdiction of the County Court.

Lush explained that he did not contend that the County Court had not concurrent jurisdiction, but that bills of exchange were not within sect. 128.

Coleridge, J.—I understand it to be admitted that the County Court may have concurrent jurisdiction. The section giving the general powers to the County Court is the 58th, which gives it jurisdiction in all pleas of personal actions where the debt or damage claimed is not more than twenty pounds; and then there is a proviso, which is very minute, which excludes any action of ejectment, or in which the title to any corporeal or incorporeal hereditaments, or any toll, &c. shall be in question, or in which the validity of any devise, &c. may be disputed, or any action for malicious prosecution, or for any libel or slander, or for criminal conversation, or for seduction, or breach of promise of marriage. Now it is clear that bills of exchange would come within the general words, and it is equally clear that they are not within the exception; then, if the County Court has a general jurisdiction over them, what is there which excludes them? I do not find any thing in the 128th section which gives a concurrent jurisdiction where the cause of action "did not arise wholly, or in some material point, within the jurisdiction of the Court within which the defendant dwells or carries on his business at the time of the action brought." I think that unless you can show that the

cause of action did not arise within the jurisdiction, that the jurisdiction must be considered to have attached; and I think that it has done so in the present instance. I think, therefore, that that ground of objection to the rule fails.

"Some material point."

The application of the expression "wholly or in some material point," to the term "cause of action," in this section, confirms the view taken by the Court of Exchequer of the meaning of the term as used in this statute. The words "in some material point" will remove much of the difficulty which arises upon the application of the term "cause of action" under the 60th section, although many questions might be suggested in which it would be very difficult to determine what is "a material point" in the cause of action. For instance, plaintiff and defendant dwell in different counties. Defendant orders goods of plaintiff at his (defendant's) dwelling, and they are delivered to defendant's carrier at the dwelling of the plaintiff. Are both the order and the delivery to be deemed parts of one cause of action, so as to make the order given where the defendant dwells "a material point" and exclude the jurisdiction of the Superior Courts? As "the cause of action," according to the definition in *Grimbley* v. *Aykroyd* (1 Cox & Macrae, 79), means the whole demand, and the order is a material point in that, it is probable that there would be no concurrent jurisdiction. But if the term "cause of action" were to receive its usual legal interpretation, as that which gives the *right* of action, inasmuch as that *right* did not accrue till delivery, the place of delivery would be the locality in which the cause of action would have arisen.

For the interpretation of the terms "where defendant dwells" or "carries on his business," see *ante*, pp. 193, 195.

3. Where any officer of the County Court is a party

221. 3rd. *Or, where any Officer of the County Court shall be a party.*—It will be observed that the words employed are, "any officer of *the* County Court." This is important, for it determines any doubt that might have arisen whether the language is general as applicable to the officers of all County Courts, or only to the officers of the particular Court. There can, however, as we presume, be no question that it is limited to the officers of the particular

County Court, who, though they may sue in the Superior Court for any cause in which, had they not been in office, they must have sued in their own County Court, are still under the same obligation as others who sue in any *other* County Court for any cause of action which they *might* otherwise have maintained there.

Actions by officers of the Courts.

But here, again, the question arises, what is the meaning of the term *the* County Court? This has been already considered (*ante,* p. 82), and thither the reader is referred. It will suffice to observe here, that if we have rightly read *the* County Court as comprising all the Courts in the county, the officers are in this position as to their privilege:

1st. An officer *may* sue in the Superior Court for any cause of action within the jurisdiction of any of the Courts within his county.

2nd. He *must* sue in the County Court, like other persons, for any cause of action within the jurisdiction of any County Court without his own county.

3rd. Where the cause of action arose partly within the jurisdiction of his own County Court and partly within that of another county, perhaps the locality in which the cause of action was *completed* would be that by which the question as to his right to sue in the Superior Court would be solved. But in such case the more prudent course will be to sue in the County Court.

Actions against officers.

222. *Actions against Officers generally.*—It is to be observed that this concurrent jurisdiction of the Superior Courts applies equally where any officer of a County Court is *a defendant,* "*except* in respect of any claim to any goods and chattels taken in execution of the process of the Court, or the proceeds or value thereof:" (sect. 128.) In resolving where to sue an officer of the County Court, it will, therefore, be necessary, first, to consider that he *may* be sued in the County Court, like any private person, in *any* case, if the plaintiff *pleases,* and *must* be so sued in *some* cases; and that the privilege to sue him in the Superior Court is only concurrently reserved in *particular* cases; that is to say,

1st. In *any* case where, had he not been an officer, he might have been sued, he may still, at the plaintiff's option, be sued in the County Court.

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2nd. He *must* be sued in the County Court, if the cause of action did not arise, or if he does not dwell or carry on his business, within the jurisdiction of *the* County Court of which he is an officer. The reasons are stated above why, as it seems to us, the term *the* County Court would not be limited to the District Court, but extends to the *whole county*. The same observations as to the "cause of action" are also to be considered in this case of an action against, as in that of an action by, an officer.

3rd. The privilege to sue an officer of the County Court in the Superior Courts is only reserved in particular cases; first, where the matter at issue is *not* in respect of any claim to any goods and chattels taken in execution of the process of the Court, or the proceeds or value thereof; secondly, where, if he had not been an officer, the case would have been within the jurisdiction of *the* County Court.

Actions against officers for proceedings under this Act.

223. *Actions against Officers for Proceedings under this Act.*—Sect. 138, for the protection of officers acting in execution of the statute, enacts, that "all actions and prosecutions to be commenced against any person for anything done in pursuance of this Act shall be laid and tried in the county where the fact was committed;" and the 82nd section provides that "it shall be lawful for the defendant, in any action brought under this Act, within such time as shall be directed by the rules made for regulating the practice of the Court, to pay into Court such sum of money as he shall think a full satisfaction for the demand of the plaintiff," &c. Upon these sections two extremely curious questions have arisen in the Carmarthenshire County Court in the case of *Morris* v. *Gardnor* (1 C. C. Chron. 263), in which the facts were as follow:

Morris v. *Gardnor* (1 C. C. Chron. 263).

It was a plaint against the High Bailiff of the Court for trespass in taking the horse of the plaintiff in execution under a judgment against one Powell. The defendant resides at Carmarthen, out of the jurisdiction of the Court, and the summons had been issued without leave of the Court. The levy had been made in Cardiganshire, but in a part of it which was within the district of one of the Carmarthenshire Courts.

The defendant had pleaded that no notice of action

Morris v. *Gardnor* (1 C. C. Chron. 263).

had been given. Upon these facts and pleadings two points were raised. First, for the plaintiff, it was contended by *Lloyd Hall*, that the 138th section, requiring notice of action, did not apply to actions in the County Court, but only to actions in the Superior Courts. The 58th section gives to the County Courts jurisdiction in all pleas of personal actions, with some specified exceptions, and the 59th section prescribes the manner in which they are to be brought in this Court, namely, by *plaint* commencing a *suit*. The 138th section, being in derogation of a common law right, is to be construed strictly, and the term there used is "all actions and prosecutions," showing that proceedings in the Superior Courts were contemplated, and not *suits* in the County Court. The entire language of the 138th and 139th sections was applicable only to proceedings in the Superior Courts. The latter part of the 138th section, also, is inconsistent with the 82nd section, one providing that where money is paid into Court the plaintiff *shall*, and the other that he shall *not*, recover. He contended, therefore, that the 82nd section applied to suits in this Court, and the 138th section to actions in the Superior Courts, and consequently that no notice was necessary. But, upon this point, the learned Judge, Mr. Johnes, remarked, "As to the defect of notice of action, it has been argued for the plaintiff, that, under the 138th section, the words 'all actions' are not to apply to actions in this Court. I do not myself see the inconsistency, in fact, of the 82nd and 138th sections; although there may be a verbal discrepancy, the actual result as to the payment of costs by the plaintiff is to be the same by both, or, at all events, the 138th section may be taken to be an exception to the 82nd. As to the meaning of the word 'action,' when a party is aggrieved he brings his action; the term 'plaint' is contradistinguished from 'writ,' but the suit is an action, whether commenced by one form of proceeding or the other. The plaint is not the action itself; it is only the mode of commencing it. I think, therefore, that as the phrase is general,—'all actions,'—it is applicable as well to suits in this Court as to those in the Superior Courts."

The other point is a more doubtful one, and appears to be a *casus omissus* in the Act. It was

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contended that if the 138th section was held to extend to suits in the County Court, this Court had not jurisdiction, because the *levy* was in the county of Cardigan, and this was the County Court of Carmarthenshire, and although the latter Court embraced a portion of the former county, the 138th section imperatively required that "all actions and prosecutions to be commenced against any person for any thing done in pursuance of this Act, *shall be laid and tried in the county where the fact was committed;* nor was that construction of those express words affected by the 2nd section, and the Order in Council which gives jurisdiction to the Carmarthenshire Court over the portions of Cardiganshire which are included in its district. This was *Lloyd Hall's* very ingenious argument:—"If the 138th section be held to apply to suits in this Court, the consequence would be, that the trial of this cause must be in the county of Cardigan, as the levy was made in that county, whilst this Court is the Carmarthenshire County Court, which, by the 2nd section of the Act, and the Order in Council of the 9th March, 1847, has jurisdiction over that part of Cardiganshire 'in like manner,' as if that part was a part of the county of Carmarthen. But he contended that, though jurisdiction was given to this Court over that part of Cardiganshire, in like manner as if it were part of the county of Carmarthen, yet, nevertheless, neither the 2nd section, nor the Order in Council, made that part of Cardiganshire any part of the county of Carmarthen; and he doubted whether any Order in Council could legally direct the Carmarthenshire County Court to be held locally within that part of its jurisdiction which is in Cardiganshire. How, then, could this suit be 'laid and tried' in the county of Cardigan, which was imperative by the 138th section? The other district County Courts of Cardiganshire could in no way get seisin of the cause, as defendant did not live or carry on his business there, and the cause of action did not accrue within the limits of their respective jurisdictions. By the 58th section all pleas of personal action not specifically excepted were amenable to this Court, but if this Court could not try such in the county of Cardigan, as directed by the 138th section, this Court would be ousted of a portion of its jurisdiction under the 58th section, unless the 138th

section was held not to be applicable to plaints in the County Court, and injustice would be done to all plaintiffs similarly circumstanced, unless the actual damage sustained exceeded 5*l.*; because they could not sue for a less amount of damage in the Superior Courts by the 128th section, without consequences following which would be worse than the injury sustained, for the exception in the 128th section applies to all cases arising from a claim to goods levied under colour of process of this Court. The 63rd section and the 118th section both show that such suits are to be brought in the Inferior Court. If, then, the 138th section be held to apply to these plaints, all trespasses to property by the officers of the Court in that part of Cardiganshire and other portions of counties all over England similarly circumstanced must go unredressed where the damage is less than 5*l.*, contrary to the spirit of 9 Hen. 3, c. 29. It is the duty of the Court, he submitted, to construe all the portions of the same Act in such a way, if possible, that they shall not be inconsistent with each other; and though it was true that, through the negligent way in which the County Courts Act was drawn, the word 'action' was sometimes used instead of 'suit' or 'plaint,' in some of the sections applicable to proceedings in the County Court, yet, from the inconsistency of the 82nd and 138th sections and the conflict of the 58th with the same section, he submitted that the word 'actions' in that latter section ought not to be interpreted to include a plaint in the County Court, and therefore in such a plaint of 'a plea of personal action' in this Court as the present the defendant is not entitled to a month's notice."

Morris v. *Gardnor* (1 C. C. Chron. 263).

The learned Judge, however, not without some doubt, held that the portions of the district that were in Cardiganshire were "in the county," within the meaning of the 138th section, and therefore that the suit was properly brought in the County Court of Carmarthenshire. He said, "As to the difficulty suggested about the venue being local to the county where the fact complained of occurred, what is meant by being tried in the county? This section must be taken in connection with the 2nd section. If construed strictly according to its words, the trial must be had in Cardiganshire. It could not be taken in any

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of the district Courts of Cardiganshire, as not being within their district jurisdiction; but, under the 2nd section, that part of the county of Cardigan where the fact occurred is brought within my jurisdiction here, 'in like manner as if it were part of (this) the adjoining county,' to which it is added or annexed. I give no decision as to the meaning of the 2nd section 'in like manner as if it were part of the adjoining county.' It may be, as argued for the plaintiff, that the part of Cardiganshire is added to this county for the purpose merely of bringing actions here. If that construction is really to be put on the section, and that part of the county of Cardigan is not made by the Order in Council for the purposes of this action a part of the county of Carmarthen, no action can be brought in this or any other similarly circumstanced County Court for such an act as is the subject of the present suit. That would be grossly unjust, but it would be the defect of the Legislature. But it does not appear to me to be any violent construction to put on the 2nd section and the Order in Council to hold that, for the purposes of venue, it may be considered to be within the limits of this county. Then, if so, there is no occasion to put a violent construction on the 138th section, so as to prevent its operation being as extensive as its words. I therefore conceive the meaning of that section to apply to actions in this Court as well as those in the Superior Courts, and so decide that a month's notice of action to the defendant is requisite, and that not having been given here the plaintiff must be nonsuited."

CAP. II.

AS TO THE SUBJECT-MATTER.

The subject-matters to which the jurisdiction of the County Courts is to extend are defined by several sections of the County Courts Acts, and perhaps the most convenient form of treating them will be, first, to present them in a group, and then to comment upon each one separately.

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224. *Sections relating to the Subject-matters over which the Court has jurisdiction.*—These are sections 3, 22, 58, 63, 64, 65, 98, 118, 119, and 122 of 9 & 10 Vict. c. 95; and sections 1, 17, and 18 of 13 & 14 Vict. c. 61.

Sect. 3. And be it enacted, that every Court to be holden under this Act shall have all the jurisdiction and powers of the County Court for the Recovery of Debts and Demands, as altered by this Act, throughout the whole district for which it is holden, and there shall be a Judge for each district to be created under this Act, and the County Court may be holden simultaneously in all or any of such districts; and every Court holden under this Act shall be a Court of Record.

Section 3. — Courts held under this Act to have the same jurisdiction as County Courts, and to be Courts of Record.

Sect. 22 And be it enacted, that the Judges and other officers to be appointed under this Act shall be authorized and required to perform all such duties in or relating to any causes or matters depending in the High Court of Chancery, or before any Judge thereof, or before the Lord Chancellor in the exercise of any authority belonging to him, necessary or proper to be done in their respective districts, as the Lord Chancellor shall from time to time by any general order direct, and for this purpose, and subject to the general rules and orders of the said Court, shall have and exercise all such authorities as may be duly exercised by the Commissioners or other officers of the said Court by whom such duties are now usually performed, and shall be

Section 22. — Judges, &c. appointed under this Act authorized to perform certain duties relating to matters depending in the Court of Chancery.

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entitled to receive the same fees and sums of money as are now payable in respect thereof, to be accounted for and applied by them as the other fees authorized by this Act to be received are directed to be accounted for and applied: provided always, that the future amount of such fees shall continue subject to the same authority for revising the same to which it is now subject.

Section 58. — Jurisdiction of the Court.

Sect 58. And be it enacted, that all pleas of personal actions, where the debt or damage claimed is not more than twenty pounds, whether on balance of account or otherwise, may be holden in the County Court, without writ; and all such actions brought in the said Court shall be heard and determined in a summary way in a Court constituted under this Act, and according to the provisions of this Act: provided always, that the Court shall not have cognizance of any action of ejectment, or in which the title to any corporeal or incorporeal hereditaments or to any toll, fair, market, or franchise, shall be in question, or in which the validity of any devise, bequest, or limitation under any will or settlement may be disputed, or for any malicious prosecution, or for any libel or slander, or for criminal conversation, or for seduction, or breach of promise of marriage.

13 & 14 Vict. c. 61, s. 1.

Sect. 1. Whereas by an Act passed in the tenth year of the reign of Her present Majesty, intituled "An Act for the more easy Recovery of Small Debts and Demands in England," jurisdiction is given to the Courts holden under the said Act for the recovery of certain debts, damages, and demands therein mentioned not exceeding twenty pounds: and whereas it is expedient to extend the provisions of the said Act, and also of a certain other Act passed in the thirteenth year of the reign of Her said Majesty, intituled "An Act to amend the Act for the more easy Recovery of Small Debts and Demands in England, and to abolish certain Inferior Courts of Record," to debts, damages, and demands not exceeding the sum of fifty pounds, and to alter and amend the said first-mentioned Act in manner hereinafter mentioned: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the

same, that the jurisdiction of the several Courts holden or to be holden under the said Act of the tenth year of Her Majesty shall extend to the recovery of any debt, damage, or demand not exceeding the sum of fifty pounds, and to all actions in respect thereof (save and except the several actions specified in the proviso in section fifty-eight of the same Act); and that the several powers and provisions of the said several Acts of the tenth and thirteenth years of Her Majesty, and all rules, orders, and regulations which have been or may be made in pursuance of the said Acts or either of them, shall extend to all debts, damages, and demands which may be sued for in the said Courts or any of them not exceeding the sum of fifty pounds, and to all proceedings and judgments for the recovery of the same, or otherwise in relation thereto respectively, as fully and effectually, to all intents and purposes, as the same respectively are now or may be applicable to debts, damages, and demands within the present jurisdiction of the said Courts.

As to the subject-matter.

Section 17.

In certain cases, on agreement of the parties, court shall have power to try causes, although the matters be beyond its jurisdiction.

Sect. 17. And be it enacted, that if both parties shall agree, by a memorandum signed by them or by their attorneys, that the County Court shall have power to try any of the actions hereinbefore respectively mentioned, in which the sum sought to be recovered shall exceed the sum of five pounds by the said recited Act or fifty pounds by this Act limited in the case of such actions respectively, or any action in which the title to land, whether of freehold, copyhold, leasehold, or other tenure, or to any tithe, toll, market, fair, or other franchise, shall be in question, then and in such case the said Court shall have jurisdiction and power to try such action: provided always, that the said parties or their attorneys shall state in their said memorandum of agreement, that they know such cause of action to be above the said sums respectively, or that they know such title to come in question in such action, and provided that such memorandum shall be filed with the Clerk of the said Court at the time of filing the demand of the plaintiff: provided also, that all local actions to be tried before any County Court with the consent of the parties shall be brought and tried in that jurisdiction only in which the lands, tenements, or hereditaments, or some part thereof are situate, are in respect whereof such actions shall be brought.

BOOK IV. THE JURISDICTION.

Cap. 2. *As to the subject-matter.*

Section 18.

No second suit in second court for the same cause.

Sect. 18. And be it enacted, that if any party shall sue another in any County Court for any debt or other cause of action for which he hath already sued him and obtained judgment in any other court, the proof of such former suit having been brought and judgment obtained may be given, and the party so suing shall not be entitled to recover in such second suit, and shall be adjudged to pay three times the costs of such second suit to the opposite party.

9 & 10 Vict. c. 95.

Section 63.

Demands not to be divided for the purpose of bringing two or more suits.

Sect. 63. And be it enacted, that it shall not be lawful for any plaintiff to divide any cause of action for the purpose of bringing two or more suits in any of the said Courts, but any plaintiff having cause of action for more than twenty pounds, for which a plaint might be entered under this Act if not for more than twenty pounds, may abandon the excess, and thereupon the plaintiff shall, on proving his case, recover to an amount not exceeding twenty pounds; and the judgment of the Court upon such plaint shall be in full discharge of all demands in respect of such cause of action, and entry of the judgment shall be made accordingly.

Section 64.

Minors may sue for wages.

Sect. 64. And be it enacted, that it shall be lawful for any person under the age of twenty-one years to prosecute any suit in any Court holden under this Act for any sum of money not greater than twenty pounds which may be due to him for wages or piece-work, or for work as a servant, in the same manner as if he were of full age.

Section 65.

Cases of partnership and intestacy.

Sect. 65. And be it enacted, that the jurisdiction of the County Courts under this Act shall extend to the recovery of any demand, not exceeding the sum of twenty pounds, which is the whole or part of the unliquidated balance of a a distributive account, or the amount or part of the amount of partnership share under an intestacy, or of any legacy under a will.

Section 98.

Parties having obtained an unsatisfied judg-

Sect. 98. And be it enacted, that it shall be lawful for any party who has obtained any unsatisfied judgment or order in any Court held by virtue of this Act, or under any Act repealed by this Act, for the payment of any debt or damages or costs

to obtain a summons from any County Court within the limits of which any other party shall then dwell or carry on his business, such summons to be in such form as shall be directed by the rules made for regulating the practice of the County Courts as herein provided, and to be served personally upon the person to whom it is directed, requiring him to appear at such time as shall be directed by the said rules to answer such things as are named in such summons; and if he shall appear in pursuance of such summons he may be examined upon oath touching his estate and effects, and the manner and circumstances under which he contracted the debt or incurred the damages or liability which is the subject of the action in which judgment has been obtained against him; and as to the means and expectation he then had, and as to the property and means he still hath, of discharging the said debt or damages or liability, and as to the disposal he may have made of any property; and the person obtaining such summons as aforesaid, and all other witnesses whom the Judge shall think requisite, may be examined upon oath touching the inquiries authorized to be made as aforesaid; and the costs of such summons and of all proceedings thereon shall be deemed costs in the cause.

ment may obtain a summons on charge of fraud.

Section 118.

Claims as to goods taken in execution to be adjudicated in Court.

Sect. 118. And be it enacted, that if any claim shall be made to or in respect of any goods or chattels taken in execution under the process of any Court holden under this Act, or in respect of the proceeds or value thereof, by any landlord for rent, or by any person not being the party against whom such process has issued, it shall be lawful for the Clerk of the Court, upon application of the officer charged with the execution of such process, as well before as after any action brought against such officer, to issue a summons calling before the said Court as well the party issuing such process as the party making such claim, and thereupon any action which shall have been brought in any of Her Majesty's Superior Courts of Record, or in any local or inferior Court in respect of such claim, shall be stayed, and the Court in which such action shall have been brought, or any Judge thereof, on proof of the issue of such summons, and that the goods and chattels were so taken in execution, may order the party bringing such action to pay the costs of all pro-

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ceedings had upon such action after the issue of such summons out of the County Court; and the Judge of the County Court shall adjudicate upon such claim, and make such order between the parties in respect thereof, and of the costs of the proceedings, as to him shall seem fit, and such order shall be enforced in like manner as any order made in any suit brought in such Court.

Section 119. — Actions of replevin may be brought without writ.

Sect. 119. And be it declared and enacted, that all actions of replevin in cases of distress for rent in arrear or damage faisant which shall be brought in the County Court shall be brought without writ in a Court held under this Act.

By sect. 122, power is given to the Judge to give possession of tenements in certain cases, as follows:

Section 122. — Possession of small tenements may be recovered by plaint in County Court.

Sect. 122. And be it enacted, that when and so soon as the term and interest of the tenant of any house, land, or other corporeal hereditament, where the value of the premises or the rent payable in respect of such tenancy did not exceed the sum of fifty pounds by the year, and upon which no fine shall have been paid, shall have ended, or shall have been duly determined by a legal notice to quit, and such tenant, or, if such tenant do not actually occupy the premises, or occupy only a part thereof, any person by whom the same or any part thereof shall be then actually occupied, shall neglect or refuse to quit and deliver up possession of the premises, or of such part thereof respectively, it shall be lawful for the landlord or his agent to enter a plaint in the County Court to be holden under this Act, and thereupon a summons shall issue to the person so neglecting or refusing; and if the tenant or occupier shall not thereupon appear at the time and place appointed, and show cause to the contrary, and shall still neglect or refuse to deliver up possession of the premises, or of such part thereof of which he is then in possession, to the said landlord or his agent, it shall be lawful for such landlord or agent to give to the Court proof of the holding, and of the end or other determination of the tenancy, with the time or manner thereof, and, where the title of the landlord has accrued since the letting of the premises,

If tenant, &c. neglect to appear, or refuse to give possession, Judge may, on proof of service of summons, issue a warrant to enforce the same.

the right by which he claims the possession; and upon proof of service of the summons, and of the neglect or refusal of the tenant or occupier, as the case may be, it shall be lawful for the Judge to issue a warrant under the seal of the Court to any Bailiff of the Court, requiring and authorizing him, within a period to be therein named, not less than seven or more than ten clear days from the date of such warrant, to give possession of the premises to such landlord or agent; and such warrant shall be a sufficient warrant to the said Bailiff to enter upon the premises, with such assistants as he shall deem necessary, and to give possession accordingly; provided always, that entry upon any such warrant shall not be made on a Sunday, Good Friday, or Christmas-day, or at any time except between the hours of nine in the morning and four in the afternoon: provided also, that nothing herein contained shall be deemed to protect any person by whom any such warrant shall be sued out of the County Court from any action which may be brought against him by any such tenant or occupier for or in respect of such entry and taking possession where such person had not, at the time of suing out the same as aforesaid, lawful right to the possession of the same premises.

Jurisdiction of old County Courts.

225. *Courts to have the same Jurisdiction as the old County Courts.*—It is to be observed that, by sect. 3, "every Court to be holden under this Act shall have all the jurisdiction and powers of the County Court for the Recovery of Debts and Demands, as altered by this Act, throughout the whole district for which it is holden." If, therefore, any question arise as to the extent of jurisdiction, reference should always be made to the old jurisdiction of the County Courts, which is transferred to the new Courts and now belongs to them, and, if not altered by the Act, will exist, and may be exercised as formerly.

Officers to act as Commissioners in Chancery.

226 *Officers to act as Commissioners, &c. in Chancery.*—It is provided, by section 22, that the Judges and officers appointed under this Act "shall be authorized and required to perform all such duties in or relating to any causes or matters depending in the High Court of Chancery, or before any Judge thereof, or before the Lord Chancellor, in the exercise of any authority belonging to him, necessary or proper to be

done in their respective districts, as the Lord Chancellor shall from time to time by any general order direct." We are not aware that any such order has been made, and we are unable to define the precise purpose of this section, unless it be to enable the officers of the County Courts to perform the duties of Commissioners for taking evidence in suits, answers, &c.

227. *Actions in the County Courts.*—These are stated in section 58 (extended by 13 & 14 Vict. c. 61, s. 1.), which also contains the exceptions. It will, perhaps, be more convenient to treat them separately, and consider,

1st. What actions *may* be brought in the County Courts.

2nd. What actions may *not* be brought in the County Courts.

228. 1st. *Actions that may be brought in the County Courts.*—By 9 & 10 Vict. c. 95, ss. 58 & 63, and 13 & 14 Vict. c. 61, s. 1, taken together, it is enacted, "That all pleas of personal actions, where the debt or damage claimed is not more than fifty pounds, whether on balance of account or otherwise, may be holden in the County Court without writ. Provided that it shall not be lawful for any plaintiff to *divide any cause of action* for the purpose of bringing two or more suits in any of the said Courts; but any plaintiff having cause of action for more than fifty pounds, for which a plaint might be entered under this Act if not for more than fifty pounds, may abandon the excess, and thereupon the plaintiff shall, on proving his case, recover to an amount not exceeding fifty pounds."

All *personal* actions may be maintained in the County Court, *except* such,

1. In which title to any corporeal or incorporeal hereditaments, or to any toll, fair, market, or franchise is in question.

2. In which the validity of any devise, bequest, or limitation under any will or settlement *may be* disputed.

3. For malicious prosecution.
4. For libel.
5. For slander.
6. For criminal conversation.
7. For seduction.
8. For breach of promise of marriage.

With these exceptions, *every personal action* may be brought in the County Court. The decisions upon the limits to these exceptions will be given when they come to be treated of.

Reference to jurisdiction of the old County Courts.

And if any question should at any time be raised upon this point, it will be necessary to refer to the jurisdiction of the old County Courts in order to solve it. For it is to be observed that section 3 enacts that "every Court to be holden under this Act shall have all the jurisdiction and powers of the County Court for the Recovery of Debts and Demands as altered by this Act," and the *preamble* reminds us that "the County Court is a Court of ancient jurisdiction, having cognizance of all pleas of personal actions to any amount, by virtue of a writ of *justicies* issued in that behalf." Hence, subject only to the above exceptions, the new County Courts have jurisdiction over every subject-matter over which the old County Courts had jurisdiction by virtue of a writ of *justicies*, and the *exceptions* of this statute, being in derogation of an authority, will be construed strictly. In determining, therefore, if an action will lie, it will be necessary, when satisfied that it is a good cause of action in law, to consider, first, whether it comes within either of the *exceptions* in the County Courts Act; secondly, whether it falls within the term "all pleas of personal actions;" and if there be a doubt as to this, thirdly, whether it could have been heard by the old County Court by virtue of a writ of *justicies*, for, if so, it is within the jurisdiction of the new County Court.

Real actions.

"*Real* actions, or (as they are called in the *Mirror*), feudal actions, which concern real property only, are those whereby the plaintiff, when called the demandant, claims the specific recovery of any lands, tenements, and hereditaments:" (Step. Com. vol. 3, p. 45.) But this form of action is abolished by a recent statute.

Personal actions.

"*Personal* actions are those whereby a man either claims the specific recovery of a debt or personal chattel, or satisfaction in damages for some injury

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done to his person or property; being the same which the civil law calls '*actiones in personam, quæ adversus eum intenduntur qui ex contractu vel delicto obligatus est aliquid dare vel concedere.*'" (Ins. 4, 6, 15.)

"*Mixed* actions are suits partaking of the nature of the other two, wherein some real property is demanded, and also personal damages for a wrong sustained:" (Step. Com. vol. 3, p. 459.)

Division of personal actions.

"Personal actions are founded on *contracts* or on *torts*, a term used to signify such wrongs as are in their nature distinguishable from breaches of contract; and these *torts* are often considered as of three kinds, viz., *nonfeazance*, or the omission of some act which a man is bound to do; *misfeazance*, being the improper performance of some act which he may lawfully do; or *malfeazance*, being the commission of some act which is unlawful:" (*Ib.* vol. 3, p. 460.)

Forms of personal actions.

"The forms of *personal* actions in use are the following, *debt, covenant, detinue, trespass, trespass on the case*, and *replevin*: the two first being founded generally on *contract*, the remainder on *tort*:" (*Ib.* p. 461.)

Debt.

Debt lies where the object is the recovery of a debt, that is, a certain sum of money alleged to be due to the plaintiff.

Covenant.

Covenant lies where redress in damages is sought for the breach of a covenant, that is, of an agreement by *deed*.

Detinue.

Detinue lies where the object is to recover a chattel personal unlawfully detained.

Trespass.

Trespass lies where the plaintiff claims damages for a trespass, or (as it is more fully expressed,) a trespass *vi et armis*, that is, an injury accompanied with actual force, as in the case of a battery or imprisonment; or, at least, implied force, as in the case of an unlawful but peaceable entry upon the plaintiff's land.

Case.

Trespass on the case (which derives its name from the comparative particularity with which the circumstances of the plaintiff's case are detailed in its written allegations,) is very comprehensive in its scope, and may be said to be in every case where damages are claimed for an injury to person or property not falling within the compass of the other forms. And, as regards its relation to trespass, we may notice this settled distinction, that where an act is done which is in itself an immediate injury to ano-

ther person or property, then the remedy is usually by an action of trespass *vi et armis;* but where there is no act done, but only a culpable omission, or where the act is not *immediately* injurious, but only by *consequence* or *collaterally*, then no action of trespass *vi et armis* will lie, but an *action on the case* for the damages consequent on such omission or act. To which we may add, that where the subject-matter affected is not corporeal and tangible, so that the idea of force becomes inapplicable, then, though the injury be by way of act done, and its operation be direct and immediate, yet the remedy is case and not trespass:" (Step. Com. vol. 3, p. 461.)

Damages.

Damages.—Personal actions can only be brought to recover specific chattels, or damages for an injury sustained. But an action for damages will in general lie wherever a right has been invaded, or, in other words, an injury committed, although no damage should have been actually sustained: it being material to the establishment and preservation of the right itself, that its invasion should not pass with impunity. But it is requisite that "the plaintiff should have sustained *some loss or inconvenience*, whether actual or nominal, of a kind proper and peculiar to himself, —for where the damage is of a merely public character, affecting the subjects of the realm at large as well as the plaintiff, no civil action lies, although the law considers the injury in that case as amounting to a crime, and, consequently, as a fit subject for an indictment. Thus, no action can be maintained for an encroachment on the highway. Wherever extraordinary damage, indeed, is sustained by an individual, he has, in general, a right of action as for redress by a civil action, though the case may, in its circumstances, also amount to a crime:" (*Ib.* p. 465.)

"Moreover, though an action will lie for an injury unattended with actual loss or damage, yet none can be maintained, even for loss or damage actually inflicted, unless it result from injury—it being a maxim, that a mere *damnum absque injuriâ* is not actionable." (*Ib.* p. 465.)

And a plaintiff is not entitled to recover in respect of any damage that is too *remote*, or, in other words, flows not naturally and directly from the alleged injury: (Comyn's Dig. "Action on Case.")

And as to suits of every class, it is a general rule

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that the right of action is not *assignable*, so as to enable the assignee to sue in his own name. The exceptions are in the cases of a bankrupt or insolvent, and executors and administrators.

229. *Detinue.*—But although *detinue* is a personal action, and as such comes within the definition of the jurisdiction of the County Courts given by the statute, in consequence of an omission to provide for the peculiar forms and proceedings necessary to sustain and enforce the judgment, it would appear that practically this form of action could not be supported. As the question is one of great importance, we extract from the *County Courts Chronicle* an excellent review of it, contributed by Mr. PATERSON.

Can detinue be brought in the County Courts?

For the wrongful detention of personal chattels, a party generally has, in the Superior Courts, the option of bringing an action of *detinue* or of trover,—the former being the remedy where the recovery of the chattel in specie is sought, the latter where it is desired only to obtain damages. In the proceedings under the County Courts Act, the old distinction between the forms of action is not preserved, actions being only divided into those of contract and those of *tort;* but, if for a wrongful detention, a suitor in these Courts can only obtain damages, the remedy given by the action of *detinue* will be out of the jurisdiction of the Courts, although no such distinction between trover and *detinue* in the proceedings under this Act was ever contemplated by the Legislature. A party may sometimes prefer obtaining, if possible, the return of the chattel (particularly, for instance, if it be a title-deed) to merely damages for its loss or conversion. It is very questionable, however, if the Courts under this Act have the power of pronouncing and enforcing a judgment to that effect.

The plaintiff, in an action of *detinue*, does seek damages for the detention of the chattel by the defendant, and, therefore, the 58th section of the Act, which gives the Court jurisdiction over all personal actions (except in certain cases not affecting the present question) where the debt or damage claimed is not more than 20*l.*, would enable a plaintiff to sue in such Courts, as well where the action is substantially *detinue* as where it is trover. The 74th section empowers the Judge, on the hearing

Can detinue be brought in the County Courts?

of the plaint, to "proceed in a summary way to try the cause and give judgment." Here no particular form of judgment is pointed out; and, therefore, if there were nothing else in the Act to limit or control this, it seems reasonable that the judgment might, in form, be such as should be required to give effect to the determination of actions over which the Court has jurisdiction by the 58th section. But, upon looking at the 94th section, which enables execution against the goods to issue, and the 98th section, which directs the summoning of a party, preparatory to his being, in certain cases, committed to prison, it would appear that the only order or judgment contemplated is one for the payment of money. The words of the 94th section are "That whenever the Judge shall have made an order for the payment of money, the amount shall be recoverable, in case of default or failure of payment thereof, forthwith, or at the time or times, and in the manner thereby directed, by execution, against the goods and chattels of the party against whom such order shall be made;" and the words of the 98th section are "That it shall be lawful for any party who has obtained any unsatisfied judgment or order, in any Court held by virtue of this Act, or under any Act repealed by this Act, for the payment of any debt or damages, or costs, to obtain a summons," &c.

Now, the judgment for the plaintiff in the action of *detinue* is not for the payment of money, but must be conditional, for the recovery of the chattel, and if the plaintiff cannot have the same, then the sum assessed for the value: if it is not so conditional, it is erroneous: (*Peters* v. *Hayward*, Cro. Jac. 681.) The judgment also gives the plaintiff his damages for the detention, together with the costs of suit. This might, no doubt, be enforced by an execution of *fieri facias*, issued under the 94th section; but it is a very different question, whether these Courts have the power of making the conditional judgment above mentioned, and afterwards of enforcing it by *distringas*, which is the means adopted by the Superior Courts, whereby the lands and chattels of the defendant are distrained, so that he render to the plaintiff the chattel which he has detained, or the sum assessed for its value.

Does the 78th section remove this difficulty? By that section it is enacted, that a certain number of Judges of the Superior Courts

"Shall have power to make and issue all the general rules

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Can detinue be brought in the County Courts?

for regulating the practice and proceedings of the County Courts holden under this Act, and also to frame forms for every proceeding in the said Courts for which they shall think it necessary that a form be provided, and also for keeping all books, entries, and accounts to be kept by the Clerks of the said Courts, and from time to time to alter any such rule or form; and the rules so made, and the forms so framed, shall be observed and used in all the Courts holden under this Act; and in any case not expressly provided for herein, or by the said rules, the general principles of practice in the Superior Courts of Common Law may be adopted and applied, at the discretion of the Judges, to actions and proceedings in their several Courts."

The Judges have framed forms in pursuance of this power, but there is no form framed by them applicable in this respect to *detinue.* The latter part of the 78th section seems only to give a certain discretionary power to the Judges of the County Courts in the practical mode of proceeding with actions in those Courts, but not to give them the power of either making or enforcing a judgment they had not independent of that section; and, therefore, although by that section they might, perhaps, frame the form or regulate the practice of issuing a *distringas*, if enabled by the Act to issue such a writ, that section vests in them no power to originate such writ.

In the recovery of tenements there is an express provision of the Act authorizing the Judge to issue a warrant for the giving of possession of the premises to the landlord, and the Judges of the Superior Courts have framed also a form of judgment. So, too, with respect to actions of replevin, the judgment is, by the 26th rule, ordered to be according to the form in the schedule to the rules. And the Judges have, by their rules, also declared what shall be the judgments against executors or administrators. But here it is not said by the Act that the judgment is to be as it is in the Superior Courts; and the 94th section, which gives execution, gives it on a judgment only for nonpayment of a sum of money, and directs the execution to be by a writ of *fieri facias*, to levy by distress and sale the money so ordered. This would strongly appear to exclude the power of issuing a *distringas* to distrain the lands and chattels, so that the defendant render the goods detained or the sum assessed for their value. If this be so, the Courts under the Act can award only damages as for the conversion of the chattels wrongfully detained, and the recovery of the specific chattels cannot be obtained by proceedings in such Courts.

230. *Actions may not be divided.*—By section 63 it is enacted that a cause of action shall not be divided "for the purpose of bringing two or more suits in *any of the said Courts.*" This is the section:

Section 63.

Demands not to be divided for the purpose of bringing two or more suits.

Sect. 63. And be it enacted, that it shall not be lawful for any plaintiff to divide any cause of action for the purpose of bringing two or more suits in any of the said Courts, but any plaintiff having cause of action for more than twenty pounds, for which a plaint might be entered under this Act if not for more than twenty pounds, may abandon the excess, and thereupon the plaintiff shall, on proving his case, recover to an amount not exceeding twenty pounds; and the judgment of the Court upon such plaint shall be in full discharge of all demands in respect of such cause of action, and entry of the judgment shall be made accordingly.

What is a "cause of action."

The meaning of the term "*cause of action*" in this section, was the occasion of much discussion in the County Courts, and of considerable difference of opinion among the profession. The decisions upon it in the County Courts were very various, and many will be found reported in the early numbers of the *County Courts Chronicle.*(a) But the subject has since been skilfully argued and received an elaborate judgment in the Court of Exchequer, in the case of *Grimbley* v. *Aykroyd* (1 Cox & Macrae, 79), and the meaning of the phrase "cause of action" pretty accurately defined in its application for the purposes of this Act to an ordinary tradesman's bill. But the practitioner must be careful not to apply that decision too largely, for the definition is strictly applicable to the one case only of a tradesman's accounts, although it certainly carries the principle to the fullest extent so far as regards that cause of action, for the facts of this case serve to mark most plainly the distinction drawn by the Court between "a cause of action" in the strict legal interpretation of the term, and "a cause of action" within the meaning of this Act.

Grimbley v. *Aykroyd* (1 Cox & Macrae, 79).

(a) Should reference be hereafter required for any purpose it will be convenient, perhaps, to name them: *Anonymous* (1 C. C. Chron. 37); *Nash* v. —— (1 C. C. Chron. 37); *Anonymous* (1 C. C. Chron. 65; *Webster* v. *Hooper* (1 C. C. Chron. 104); *Aindow* v. *Rimmer* (1 C. C. Chron. 104); *Riley* v. *Gibbs* (1 C. C. Chron. 128); *Gass* v. *Mason* (1 C. C. Chron. 153); *Head* v. *Tudor* (1 C. C. Chron. 174); *Fessant* v. *London* (1 C. C. Chron. 211).

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Grimbley v. *Aykroyd* (1 Cox & Macrae, 79).

The facts of this case are stated in the judgment, which we extract entire.

POLLOCK, C. B., now delivered judgment.—A rule *nisi* was obtained in this case for a prohibition to the Judge of the County Court for Shipston district, in Worcestershire, against proceeding further in 228 plaints at the suit of the plaintiff, for which summonses had been served upon the defendant, the total amount of the sums claimed in all of which, taken together, was 303*l.* 19*s.* The amount in several summonses varied from 5*s.* to 5*l.*; but all, it was alleged, related to the one cause of action. It was stated that the debt arose under these circumstances:—The defendant was a contractor for making a part of the Oxford, Worcester, and Wolverhampton Railway, and he told the plaintiff, a grocer, to supply his labourers with provisions and other articles according to written orders, which would be given from time to time to the men by his sub-contractors. It appeared from the affidavits now put in on behalf of the plaintiff that these orders, of which upwards of 3,000 had been issued, were in this form:—

"Middleton Hill, July 14, 1847.

"Mr. Grimbley, let the bearer have goods to the amount of (five) shillings.

"CHADWICK AND EDWARDS."

That, upon their being presented to the plaintiff, he supplied the bearer with the amount in such goods as he required; and that the sub-contractors, on settling every Saturday with the men, deducted the amount of these orders in their accounts as so much money paid. Goods to a large amount having been supplied under this arrangement, and upwards of 300*l.* finally remaining unpaid, the plaintiff commenced, on the 17th of September, 1847, 228 plaints (each plaint being for the amount of the goods supplied to each workman), in the County Court against the defendant, and recovered judgment, and received the amount in one of them for 10*l.* before he could be stayed by the present rule. It was stated that when the rule was moved for the costs in that suit amounted to upwards of 10*l.*; and that if all were to be contested that would be the average amount of costs in each. Cause was shown against the rule in

the last term by Mr. *Whitehurst* and Mr. *Pigott*, and judgment was then reserved. But for the purpose of the present decision this was wholly immaterial, the question being whether, on the assumption that he was indebted, the County Court had jurisdiction. This depends on the true construction of the Small Debts Act, 9 & 10 Vict. c. 95, particularly on the 63rd section, and not upon any old rule of the Common Law, as to the jurisdiction of the County Court. It will be proper, however, to consider what the rule was, in order to give a true construction to the County Courts Act. At Common Law the County Court held pleas of debt or damages to the value of 40*s*. or above: (4 Inst. 266.) "Placita de catallis debitis quæ summam 40*s*. attingunt vel eum excedunt sine brevi regis placitari non debent" (2 Inst. 312); and if an entire contract or debt of 40*s*. or upwards was severed into sums below 40*s*. a prohibition was granted: (Roll's Abr. "Prohibition," 317). And, without saying that the debt arose on one entire contract, it was laid down by Fitzherbert (Natura Brevium, 66), "that if a man do owe another man five marks, and he sue several plaints for the same in the County Court, or any other Court (meaning, no doubt, the Hundred Court or Court Baron), against the debtor, he shall have a prohibition thereof and rehearse the matter, and that it would defraud the King's Court of its jurisdiction." This doctrine was applied to contracts made at different times between the same persons for several sums each less than 40*s*. but altogether amounting to more, as in an *Anonymous* case (1 Vent. 65), in *Girling* v. *Adams*, reported by the name of *Girling* v. *Aldas* (1 Vent. 73), which was for the price of various parcels of malt, sold at different times, "because, though they be several contracts, yet forasmuch as the plaintiff might have joined them all in one action, he ought so to have done, and sued in the Court above, *and not put the defendant to an unnecessary vexation;* no more than he can split an entire debt into divers sums to give the Inferior Court jurisdiction in *fraudem legis*." The reason given is a very satisfactory one, for it would be extremely vexatious if a plaintiff, from whom goods had been purchased in small quantities, at small prices, at different times, by distinct contracts, either payable immediately, or on

Grimbley v. *Aykroyd* (1 Cox & Macrae, 79).

Cases cited.

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credit, which had expired, instead of including all in one action, which he could do after the debt became all due, should divide the debt into several debts, and sue for each in a separate action in the County Courts, which could give no adequate relief by consolidating them, in the exercise of their equitable jurisdiction, if they had any, as a Superior Court would, for they could not unite them so as in the aggregate to exceed or be equal to 40*s*. The extent to which that vexation might be carried may be illustrated by the present case, in which tickets were given, upon which the plaintiff supplied goods, and it appeared that there were 3,000 different tickets, and consequently 3,000 different items or separate contracts. It is quite true, indeed, that when each contract became due in cash, the creditor might, in the absence of any implied contract to the contrary, immediately sue for it, but when several debts had become due, he could unite them in one count in debt, on simple contract, or in *indebitatus assumpsit*, as one entire debt, and there appears to be no good reason why he should not do so. In the case of *Rex* v. *The Sheriff of Herefordshire* (1 B. & Adol. 672), the judgment of Lord Tenterden was said to be at variance with the law laid down in the older authorities. The case itself, however, might be distinguished, because there the debts were treated as being entirely distinct and separate from each other, the one having no connection with the other. But in the case of a running account with a tradesman the items are generally connected, the different contracts being usually made with the understanding that, if not paid until after others have been made, they are to form part of the same debt, or that several items are to be united in one bill. The present case, however, does not depend upon any authority derived from reported cases, but upon the construction of the recent Act, 9 & 10 Vict. c. 95. By the 58th section, the new Court has jurisdiction in "all pleas of personal actions where the debt or damage claimed is not more than 20*l*. whether on a balance of account or otherwise." That clause had probably been introduced in consequence of the provision in some of the Courts of Requests Acts, that the Act should not extend to any debt for the balance of an account originally exceeding a given sum (as in *Porter* v. *Philpot*, 14 East, 345).

Be that as it may, it cannot be doubted that the law was made to give jurisdiction where the debt claimed consisted of various items, together originally not exceeding 20*l.* at the time of the suit, or which had been reduced to that amount by payment or set-off of other sums. They had next to consider the effect of the 63rd section, and the whole question is as to the meaning of the term "cause of action" in that section. It is provided "that it shall not be lawful to divide any cause of action, for the purpose of bringing two or more suits in any of the said Courts; but any plaintiff having 'cause of action' for more than 20*l.* for which a plaint might be entered under this Act if not for more than 20*l.* may abandon the excess, and thereupon the plaintiff shall, on proving his case, recover to an amount not exceeding 20*l.* and the judgment of the Court upon such plaint shall be in full discharge of all demands in respect of such cause of action, and entry of the judgment shall be made accordingly." What, then, is the construction of the words "cause of action?" The term "debt" or "damage" here is not used as it is in the passage already cited from 4 Inst. 266, but the more extensive term adopted is "cause of action." This term, "cause of action," did not necessarily mean "a cause of action" on one single entire contract, for there may be one cause of action on several debts contracted at different times, and in by far the greater number of cases a count in *indebitatus assumpsit*, or debt, is founded on many distinct contracts, as was pointed out in the case of *Hesketh* v. *Fawcett* (11 M. & W. 360), and one count might be considered as one cause of action. To provide that one cause of action on one entire contract should not be divided would be unnecessary and surplusage, and although the argument that a clause in an Act of Parliament, if understood in one sense would be inoperative, and in another sense would be operative, is not by any means conclusive, because it could not but be admitted that clauses are often introduced into an Act of Parliament *ex abundanti cautelâ*, yet it is of some weight, and the probability was that the Legislature, in enacting that a "cause of action" should not be divided, meant a "cause of action" which, but for that enactment, would be divisible. And when it is considered to what abuses the narrower con-

Grimbley v. *Aykroyd* (1 Cox & Macrae, 79).

Meaning of the words "cause of action."

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struction of this term might lead (which is strongly exemplified in the present case, in which 228 actions have been commenced, and 3,000 might have been brought), we think we may safely conclude that the term "cause of action," ought to be interpreted "cause of one action," and not be limited to an action on "one separate contract." But, on the other hand, if the term is to comprise all sums that might be included in one count, as debt for work and labour, for goods sold, and for occupation, which, though totally unconnected with each other, might be included in one *indebitatus* count, they would be precluded from being divided under this particular clause, and if indivisible, and the creditor brought an action for only one part, he would virtually abandon all claim to the remainder by the operation of the latter part of the 63rd section. In such a case Mr. Justice Coleridge had held that a similar clause in the Brighton Court of Requests Act, 3 & 4 Vict. c. 10, s. 24, did not apply. In that case the demand had been for three distinct things, a horse sold, for goods sold, and for rent; but he made a distinction between that case and one where a debtor has a bill running on from day to day: (*Neale* v. *Ellis*, 1 Dowl. & L. 163; 12 L. J., Q. B. 329.) In such a case, though each item of goods supplied, or work done, constituted a separate contract, so that after the stipulated price became due, the tradesman could sue for one item, yet the understanding is undoubtedly that the several items shall be united, and so form one entire demand; and, doubtless, if, after several items have been added to the first, the tradesman were to bring a separate action for each item, as for a distinct debt, a Superior Court would stigmatise such a proceeding as vexatious. It appears, then, that a great inconvenience would follow, if the term "cause of action" were interpreted to mean "cause of action" on one separate contract; and also if the construction were to be that it was intended to cover all contracts executed, however dissimilar in character, that could be included in one *indebitatus* count, which, according to the modern practice, may comprise any number of separate unconnected contracts, whenever made, each having ended in a debt before the commencement of the suit. As some extension must be given to the former construction, some restriction must

Not to include all that might be included in one *indebitatus* count.

be put on the latter; and we think we ought to hold that the 63rd clause does apply to the former cases; whether it applies to all debts which could be comprised in one description, in one count, as for goods sold or not, the Court need not, in the present instance, determine; but, at all events, to the case of tradesmens' bills, in which one item is connected with another in this sense, that the dealing is not intended to terminate with one contract, but to be continuous, so that one item, if not paid, shall be united with another, and form one entire demand. If that demand exceed 20*l.* it would of course cease to be within the jurisdiction of the County Court, and, therefore, we are of opinion, on the facts disclosed in the affidavits before us, that all the debts claimed fall within that description—the total greatly exceeding 20*l*, and that they ought not to have been separated into different suits. Whether, if the total had only amounted to 20*l.* and the items then were separated and sued for by separate plaints—the total being within the jurisdiction of the County Courts, which could then have given adequate relief—the suits could have been prohibited, was a question which need not in the present instance be discussed. But when the total exceeds that amount, and justice cannot be done in the County Court, we are of opinion that the County Court has no jurisdiction; and, therefore, that the prohibition applied for by this rule ought to go.

Grimbley v. *Aykroyd* (1 Cox & Macrae, 79).

Rule absolute for a prohibition.

From this case, the following conclusions may be drawn:

Results of *Grimbley* v. *Aykroyd.*

1st. That the term "cause of action," as employed in the 63rd section, is not to be read in its strict legal sense as being anything from which a *right* of action accrues, but that it is to receive a construction according to the purposes of this Act.

2nd. That, for the purposes of this Act, the term "cause of action," is equivalent to the term "demand."

3rd. That, in the case of a tradesman's bill, the implied contract is that every new item of credit shall be added to the former ones then outstanding, so as to constitute *one demand* for the whole, and therefore one cause of action within the meaning of the statute.

But this decision goes no further than the case of

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an ordinary tradesman's accounts. Beyond the ruling that the term "cause of action," in sect. 63, is not to be construed in its strict legal import, but according to the purposes of the Act, the case of *Grimbley* v. *Aykroyd* affords no solution of the numerous other questions that must continually arise in practice, in which it will be extremely difficult to say whether there be one or more causes of action, and the more so in consequence of this very decision, which, departing from the legal definition of the term "cause of action," leaves it altogether doubtful what it is to be understood to mean. Nor are the doubts and difficulties thus raised merely speculative. They are practical, and must be frequent, for the reader will remember that, if he divides a cause of action which ought not to be divided, and recovers, he is barred from recovering the remainder of the debt, and if he brings an action in the Superior Courts for two or more causes of action that may have been separately brought in the County Court, he incurs the hazard of losing his costs. Therefore, it becomes of essential importance that the meaning of the term and its application should be clearly defined. A moment's consideration will suggest many instances of the manner in which the decision in *Grimbley* v. *Aykroyd* not only fails to do this, but really increases the perplexity, and which will suffice to show the difficulties that envelope this point, and to put the practitioner upon his guard, so that he may not split or unite several matters that may be *in law* distinct causes of action, relying upon their forming one *demand* under the decision of the Court of Exchequer in the case of *Grimbley* v. *Aykroyd*.

The case of *Wickham* v. *Lee* (1 C. C. Chron. 277), serves to illustrate our argument as to the meaning of the term "causes of action." In that case, the plaintiff had entered two plaints, one for a year's rent, the other for double value for holding over after notice. It was held by the Court of Queen's Bench, that these were different causes of action within the meaning of that term in the statute, and that the test was not, as it had been argued, whether they were such as *might* be joined in one action in the Superior Court, for many subject matters that might there be joined, were yet distinct "causes of action" or "demands" under the provisions of the County Courts

Act. PATTESON, J., said, "It is true that a count for double value may be joined to a count in debt for use and occupation, but I do not understand that the Court of Exchequer has gone the length of saying that wherever causes of action *may* be joined, they *must* be joined, and to me it seems that this is quite a distinct cause of action." And COLERIDGE, J., observed:—"No doubt a count for use and occupation and a count for double value may be joined, but they stand on a different footing; they assume the parties to fill a different relation, and the causes of action are quite distinct."

The same definition of the term "cause of action," was taken by the Court in the case of *Gregory and another* v. *Chidsey*: (1 Cox & Macrae, 145.) There PATTESON, J., said:—"It certainly does not mean all that might be included in a general *indebitatus* count, for that may contain different causes of action altogether very distinct from one another."

In the case of *Kimpton* v. *Willey* (3 C. C. Chron. 142), the plaintiff sued out two plaints in a County Court. The particulars of the first exceeded 20*l.* for work and labour for certain services, and goods sold and delivered, and purported to give credit for a set-off, showing a balance under 20*l.* The particulars of the second plaint were items for moneys lent, not exceeding in the whole 20*l.* Some of the items in the two plaints were contemporaneous, but there were no items in any other way connected. Held, that the particulars of the two plaints did not form one cause of action within sect. 63.

231. *Abandoning excess.*—If, then, it be found that the cause of action cannot be safely divided, when the total debt due to the plaintiff exceeds 20*l.*, it will be necessary to consider whether he shall *abandon the excess* for the purpose of suing in the County Court. This he may do, if he pleases, by virtue of sect. 63, which provides that "any plaintiff having cause of action for more than twenty pounds for which a plaint might be entered under this Act if not more than twenty pounds, may abandon the excess, and thereupon the plaintiff shall, on proving his case, recover to an amount not exceeding twenty pounds, and the

Abandoning excess.

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judgment of the Court upon such plaint shall be in full discharge of all demands in respect of such cause of action, and entry of the judgment shall be made accordingly."

The effect, then, of abandoning the excess will be to bar his right of recovering it thereafter, for the judgment is to operate "in full discharge of all demands in respect of such cause of action," so that a mistake in resolving what is or is not "a cause of action" may be attended with serious consequences. If, for instance, a defendant be indebted to a plaintiff in two sums for two matters which may be supposed to be two distinct causes of action—one for 100*l.* and the other for 10*l*—and he sues for the 10*l.* in the County Court and obtains judgment, and afterwards it should be determined by the Superior Court that they were not two causes of action, but one, according to the meaning of the term in the statute, the claim of 100*l.* is fully discharged by the judgment for the 10*l.*

Such abandonment of excess must be stated in the plaint.

But, upon this provision, as it appears to us, a question may be raised which we would suggest to the reader who may find himself in this not improbable predicament. It is to be observed that the plaintiff is permitted by the section to *abandon the excess*, and *thereupon*, upon proving his case, to recover, &c. Now it might be fairly contended that the abandonment must be by some positive act and of record, so that the record of the proceedings and the judgment thereon, which is to operate as a discharge of the whole demand, shall show the abandonment of the excess. For how otherwise is it to be proved? If, for instance, a plaintiff bring an action in the County Court for goods sold, and recover, the record is simply of an action on contract, in which the plaintiff recovered of the defendant 10*l.* If afterwards he bring an action in the Superior Court for 30*l.* for other goods sold, and the defendant plead a discharge under the provisions of the 63rd section, or judgment recovered, and produce the certificate of such judgment for 10*l.* in the County Court, how is he to prove that the subject-matter of that judgment was the same cause of action as that now sued for? Is parol evidence to be admitted to show that the goods sold in 1847, and which alone were proved in

the County Court, constitute a part of the same cause of action as the goods sold in 1848, for which the present action is brought? Certainly such proof would be extremely difficult, if not impossible. Upon the whole we are very strongly inclined to the opinion that if the plaintiff limits his proof to a debt of 20*l*,. without formally abandoning any excess, he might recover the excess in another action; even though, according to the definition of the phrase in *Grimbley* v. *Aykroyd*, it be the same cause of action, for the judgment in the first action only operates as a discharge of such when *formally* abandoned and "*entry of the judgment accordingly;*" — that is, when the judgment itself shows such abandonment and is the evidence of it.

Since the above observations were written, the case of *Vines* v. *Arnold* (3 C. C. Chron. 8,) has been decided, in which the Court of Common Pleas adopted the construction here contended for. In that case, Maule, J. said:

Vines v. *Arnold*, (3 C. C. Chron. 8.)

"We think that there must be something done by the plaintiff to show that he abandons the excess beyond 20*l*.; and without that is done, the plaintiff ought to be nonsuited in the County Court. It is a good defence in the County Court that the plaintiff has proved a debt which the defendant has shown to be a parcel of a larger debt exceeding 20*l*., and the defendant is thereupon entitled to the judgment of the Court, unless the plaintiff abandons the excess. But the plaintiff ought to have the option of saying that he abandons the excess or to be nonsuited, that he may sue for the whole in the Superior Court. To hold otherwise would lead to much mischief, for then in every case—even where it was doubtful whether the sum sought to be recovered by plaint in the County Court was part of a larger debt, it might be of 500*l*., it would be said that the plaintiff, *ipso facto*, abandoned his demand of 500*l*., and was barred by the judgment of the County Court from recovering more than 20*l*., when he attempted to claim his whole demand. That never could have been the intention of the Legislature. If the defendant does not choose to insist on a defence that he has at the County Court, that is his fault. If he does choose

Cross-demands.

to insist upon it, the plaintiff must have his option either to allow the defence, pay the costs, and sue in the Superior Court, or to abandon the excess and recover part of a demand which really was not within the jurisdiction of the County Court, but which was made so under sect. 63. The rule, therefore, must be absolute to enter the verdict for the plaintiff for 21*l.* 10*s.* on this issue."

232. *Cross-demands.*—As the jurisdiction is limited to claims for debt or damage to the amount of 20*l.*, unless where the excess is abandoned by the plaintiff, the effect of cross-demands is a matter of great importance, and not free from difficulty. As a general rule the amount due on a cause of action is the whole sum due to the plaintiff upon that cause, independently of any set-off to which the defendant is entitled (*Jenkinson* v. *Norton*, 5 Dow. 76), in which it was observed by Lord Abinger that "the statutable right to set-off does not extinguish the debt, but only gives a party power to avail himself of it in that manner." But this rule must not be too hastily received without careful examination whether it is strictly applicable to the facts of the particular case, for it may be avoided by many other circumstances, as, where *a balance has been struck*, in which case the account stated is the cause of action; or where the terms of the original contract were that the defendant's claim should be deducted, as in *Porter* v. *Philpot* (14 East, 344), which was an action by a plumber for work and materials provided, and it appeared that the original agreement was that the defendant was to be entitled to a deduction for the old lead. This was held by Lord Ellenborough not to be a cross-demand, but a condition of the contract, and that the sum due was the value of the work, &c., *minus* the old lead. Otherwise it is where the original debt has been reduced by part payments; money paid on account is not in the nature of the set-off, but a discharge to the extent of the sum so paid, and is to be pleaded as such, and the cause of action is the balance remaining due, and if within the jurisdiction of an Inferior Court, should be issued for there: (*Chadwick* v. *Binning*, 5 B. & C. 582; *Horn* v. *Hughes*, 8 East, 346.)

Cross-demands.

But to maintain an action in the County Court upon a balance of cross-accounts, it must distinctly appear that such balance has been actually ascertained and assented to *mutually*. It will not suffice that the plaintiff should admit the claim of the defendant to a certain amount, and give credit for it; the parties must have *agreed* to the balance, from which agreement the law will infer a fresh promise to pay, which constitutes a *cause of action* in law, and a *demand* under the definition of the phrase *cause of action* in the County Courts Act.

This view was adopted by the Court of Common Pleas, and in the cases of *Woodhams* v. *Newman* (1 Cox & Macrae, 231); and *Beswick* v. *Capper* (1 Cox & Macrae, 243), for a full report of which see Appendix.

Statute of Limitations, &c.

233. *Statute of Limitations, &c.*—If a portion of the original debt be barred by the Statute of Limitations, the remainder may be recovered in the County Courts: (*Shaddock* v. *Bennett*, 4 B. & C. 766.) And so where a part of it is irrecoverable in law, as, when it was contracted during infancy: (*Bateman* v. *Smith*, 14 East, 301.) The test is, what is the amount which the plaintiff is entitled in law to recover upon that demand at the time of action brought? If he could not recover more than 20*l.*, he must sue in the County Court; but if he has a right to recover more, even though he does not desire to avail himself of it, he *cannot* sue in the County Court without formally abandoning the excess.

We now note some of the more important "causes of action" upon which the question of the right to split demands has arisen, and of which the case of *Grimbley* v. *Aykroyd* affords no solution.

Bills of exchange and promissory notes.

234. *Bills of Exchange and Promissory Notes.*—It certainly appears to us scarcely doubtful (although we are aware that high authorities differ in this view) that the decision in the principal case will not extend so far as to make a bill of exchange or promissory note part of one demand in common with the other items of an account due to the same plaintiff. A bill of exchange extinguishes the debt in respect of which it is given, and constitutes in itself a new and complete cause of action; and we have little or no doubt

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that it can be separately sued for in the County Court. So, where a party gives two promissory notes, each for less than 20*l.*, in payment of a debt of more than 20*l.*, a separate action may be maintained for each, although both may be due at the time of action brought. Mr. GALE, who is a high authority, has, indeed, expressly decided in an *Anonymous case* at Southampton (reported 1 C. C. Chron. 65), that where two bills of exchange accepted by the defendant, if drawn for separate considerations, are in the hands of the same plaintiff, a separate summons may issue in respect of each. And we have no doubt that it would be so not the less where the original considerations formed part of one demand, which it would have been necessary to sue for in one action, because the original debt is discharged by the bills or notes, which constitute new causes of action. Nor is this particular case at all affected by the decision in *Grimbley* v. *Aykroyd*. But some more dubious points have arisen in the County Court, which it may be useful to note.

Anonymous (1 C. C. Chron. 65.)

Fessant v. *Longdon* (1 C. C. Chron. 211).

Thus, where a promissory note was payable by instalments, of which three were due, amounting together to more than 20*l.*; the plaintiff brought an action in the County Court for one of them, without abandoning the excess. Was it within the jurisdiction? The learned Judge (Mr. CANTRELL), held that it was, and permitted the plaintiff to proceed to judgment for that one only, leaving it to the defendant to apply for a prohibition, should the plaintiff afterwards bring actions for the other instalments then due: (*Fessant* v. *Longdon*, Derbyshire, 1 C. C. C.211.) But this decision could not be supported under the new definition of the term "cause of action," for all the instalments due certainly constituted *one demand*, as much as do the various items of a tradesman's bill. A more difficult question was that raised in the Westminster County Court, before Mr. MOYLAN, in the case of *Head* v. *Tudor* (1 C. C. Chron. 174), which was an action against a co-obligee, to recover his share of two instalments paid by the plaintiff upon a joint and several bond for 250*l.* The instalments sued for were less than 20*l.* But the learned Judge nonsuited the plaintiff for two reasons, first, because the bond must be produced to prove the debt, and that being for 250*l.* placed it beyond his jurisdiction; and,

Head v. *Taylor* (1 C. C. Chron. 174).

secondly, that it was not competent to the plaintiff to sue his co-obligee for each separate instalment. But neither of these reasons appear to us sufficient; for the test is this: *is there at the moment of action brought a complete right of action for a demand not exceeding* 20*l.*? The moment the plaintiff had paid an instalment he had a right of action against his co-obligee for contribution, and the amount of the "cause of action," upon which such right accrued, was not the whole bond, but the defendant's share of the sum so paid. Mr. MOYLAN observed in this case: "it was admitted that the money was sought to be recovered upon a bond. How could he hear other evidence of the existence of the debt when the bond would prove it? That must be produced, and the moment it was produced, it being for a sum above 20*l.*, he would have no power to entertain the case. A short time since, an action was brought in that Court to recover 15*l.* interest upon a bill of exchange. Before that could be recovered, it was necessary to prove the existence of the bill. That was produced, and found to be for 300*l.* and of course he declined to entertain the case. The parties subsequently reduced the bill to 20*l.* abandoning the excess, and sued upon it in that Court. In his opinion the Legislature never intended that large debts should be split into several small ones, and he perfectly agreed with the remark of Baron Alderson, that it was never intended to make a plaintiff or defendant a witness in cases where the sum in dispute exceeded 20*l.* In his opinion it was not only necessary to state upon the summons the plaintiff's intention to abandon the excess then due, but his right to sue for any money that might accrue and become due upon the bond subsequently." It appeared also that some past instalments were due, and for those the plaintiff should have abandoned the excess, as they all certainly formed a part of *one demand*, due at the time of action brought; but Mr. MOYLAN required the abandonment of all claims upon subsequent instalments; an objection which appears altogether unsustainable.

Head v. *Tudor* (1 C. C. Chron. 174).

The case to which allusion was made above as to the recovery of interest upon bills of exchange is not reported, but the question is one of very great importance, and it may be solved by the same test, "what is the cause of action?" Clearly it is the

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interest due; the bill or note is only the evidence, not the subject-matter, of the demand, and it is the subject-matter that determines the jurisdiction, viz. is it a debt or demand for a sum not exceeding 20*l.*? If Mr. MOYLAN's view be correct, interest upon a note of long date is virtually irrecoverable. The same learned Judge, in the case of *Gass* v. *Mason* (1 C. C. Chron. 153), held very properly that where two bills of exchange for different dates were given at the same time to the same party in liquidation of a debt, they were different causes of action, and might be sued upon separately. In the Lancashire Court it was held by Mr. HULTON that on a joint and several promissory note for 40*l.* an action might be maintained against each of the makers for 20*l.*: (*Aindow* v. *Rimmer*, 1 C. C. Chron. 104.) But we apprehend the plaintiff could not do this without abandoning the excess, for his demand is against *both* the makers for 40*l.* or against *either* for 40*l.*, it is *not* a demand for 20*l.* from *each of them.*

Gass v. *Mason* (1 C. C. Chron. 153).

Aindow v. *Rimmer* (1 C. C. Chron. 104).

But a still more difficult question has been raised upon the right to sue at all in the County Court for interest or instalments due on a promissory note for more than 20*l.* It is contended, that in order to prove the amount of interest due, it is necessary to prove the original debt, and the production of the note immediately ousts the jurisdiction. But, as it seems to us, this cannot be so. The note is not the demand, it is only evidence of the demand. The solution will depend mainly upon the wording of the note, and the manner in which the interest is thereby stipulated to be paid; for if it be to pay at a named date, with interest, the engagement is to pay principal and interest together, and they form one demand, and could not be sued for separately.

Interest on a judgment. *Orchard* v. *Norman* (1 C. C. Chron. 38).

235. *Interest.*—So in the case of *Orchard* v. *Norman* (1 C. C. Chron. 38), the same doubt was suggested as to the recovery of interest upon a judgment debt. This was a summons for 15*l.*, the amount of one year's interest on a judgment recovered for 300*l.* To prove the interest due, it was necessary to prove the debt, and it was thereupon objected that, the debt being for more than 20*l.*, the Court had no jurisdiction, and the learned Judge seemed to be of this opinion, for he said, "before I can proceed to hear

the case, I must be satisfied that the principal is due. I must inquire if there is a sum of 300*l.* owing, and that at once ousts the Court of its jurisdiction."

Judgments in the Superior Courts.

236. ***Judgments in the Superior Courts.***—It has now been solemnly decided by the Court of Queen's Bench in the case of *Winsor* v. *Dunford* (1 Cox & Macrae, 132), that the County Court *has* jurisdiction to entertain an action on a judgment obtained in a Superior Court, where the amount claimed thereunder does not exceed 20*l.* (now 50*l.*) The Court observed—

Winsor v *Dunford* (1 Cox & Macrae, 132.)

Two objections have been raised to the jurisdiction: the one, that a County Court has not authority to entertain an action on a judgment of one of the Superior Courts: the other, that a County Court has not the means of trying the issue whether there is such a judgment or not. The first of these objections is met by the language of the Act giving a jurisdiction, which is not, in respect of this subject-matter, abridged by subsequent exceptive words, and also by the fact that the necessity for averring that the cause of action arose within the jurisdiction, which in respect of other Inferior Courts was and is the difficulty, is not incident to the particular proceeding in a Court constituted under the 9 & 10 Vict. c. 95. The other objection resolves itself into the question, whether there can be a *certiorari* and *mittimus* for the purpose of sending the tenour of a record of a Superior Court to a County Court from the Court of Chancery? The case in 1 Salk. 209, shows that there may be: and, indeed, the difficulty suggested by Mr. Baron Alderson, in the other case adverted to in the argument, is one of inconvenience only. There does not seem to be any positive difficulty in the way of obtaining the proper evidence; and therefore, even if the supposed inconvenience did not appear to have been suggested by very refined apprehensions, we should be bound to hold that the jurisdiction did not fail for want of means to exercise it

Rule discharged with costs.

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237. *Actions pending in the Superior Courts.*—It has also been much questioned, whether an action can be brought in the County Courts while another action is pending in a Superior Court for the same debt or demand. In the case of *Rees* v. *Owen* (1 C. C. Chron. 47), the learned Judge, Mr. JOHNES, adjourned the hearing to wait the decision of the Superior Court. In the Westminster Court, Mr. MOYLAN, in the case of *Keogh* v. *Burke* (1 C. C. Chron. 87), expressed very considerable doubt whether such an action could be maintained. There, two actions were pending for the same cause, one in the Superior Court, the other in the County Court: the plaintiff's solicitor stated that neither of them had been abandoned. A decision by Mr. AMOS was cited, in which he had heard such a case. But Mr. MOYLAN said, "I should not like to act upon Mr. Amos's views of the case, as it appears to me that the proceedings in the Superior Court are a bar to my proceeding. At all events, I cannot entertain the question now without further consideration. Suppose there should be a decision against the defendant in this Court, that will not stop the proceedings in the Superior Court. It would, in my opinion, be running a sort of race for justice. I don't think I could entertain the case, but I have no objection to adjourn the case." In the County Court of Yorkshire, in the case of *Carter* v. *Lee* (1 C. C. Chron. 173), Mr. WALKER expressed a similar opinion. He nonsuited the plaintiff, observing that "he entirely agreed with the argument for the defendant, and thought it would be hard if judgment could be obtained in a County Court when an action was pending for the same cause in a Superior Court. The plaintiff ought to have disposed of his action in the Court of Exchequer before he commenced proceedings in the County Court. A mere notice was clearly insufficient. The only way in which an action in a Superior Court could be legally discontinued was by taking out a rule, taxing the defendant's costs, and paying them. After the plaintiff had done so, he would be entitled to proceed *de novo* in the County Court." And in Staffordshire it was so held by Mr. TEMPLE, in the case of *Stevenson* v. *Cooper* (1 C. C. Chron. 214), who, after taking time to consider, stated that "he had carefully examined the authorities quoted when the question was mooted,

Carter v. Lee, (1 C. C. Chron. 173).

Stevenson v. Cooper (1 C. C. Chron. 214).

Actions pending in the Superior Courts.

and he had been the more anxious to do so, because the result would necessarily affect many cases within the jurisdiction of this Court, and likewise some decisions which he had given throughout the circuit where the same difficulty was raised. It was quite clear to him now, that he was wrong in the previous cases, and he now held, with the authorities which had recently been given in other Courts of Law, that an action pending in a Superior Court was an answer, or, in other terms, a plea of abatement and bar to one instituted in an Inferior Court. The effect of this judgment therefore is, that where an action is instituted in any of the Superior Courts in London, the same suit cannot be brought under the jurisdiction of the Judge of the County Courts. He should order the plaintiff to be nonsuited."

But for a *dictum* in 1 Rol. 54, that a prohibition will go "if an action in an Inferior Court be founded upon a judgment in B. C. or C. B.," we should have felt great doubt upon the point in question. *Lis pendens,* although a good plea in the Superior Court to an action in which the plaintiff is pursuing precisely the same remedy, differs materially from an action in the County Court, in which he is pursuing a different remedy, under a different jurisdiction. A plaintiff may pursue all his remedies at once, if he has different ones. Here he takes this course at his own peril, for the first judgment would be a bar to the other action, and subject him to costs. If he stays proceedings in the Superior Court, in order to bring an action in the County Court for the same cause of action, he is liable to the costs of discontinuance; if he does not discontinue there, but goes to judgment in the County Court, the defendant may immediately plead such judgment *puis darrein continuance,* and recover costs; or, if he goes to judgment in the Superior Court, while the action is pending in the County Court, it will be a bar to recovery in the latter. The defendant being thus amply protected, why should the County Court enter upon the multitudinous questions that might be raised upon the point whether the identical demand forms the subject-matter of the two actions? And that question must be first determined upon a hearing of all the facts, before the County Court can refuse to entertain the action. Besides, how is the necessary information to be obtained? The pleadings in the

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Court above must be produced and inspected before it can be properly determined how far the actions are for the same cause, and differing, as these do, in the two jurisdictions, how is it possible to draw from them any satisfactory and safe conclusion?

Actions pending in the Old County Courts.

238. *Actions pending in the old County Courts.*— The curious questions that might have arisen upon the manner of dealing with actions pending in the old County Courts, or the Courts in schedules (A.) and (B.), at the time of their conversion into the Courts regulated by the County Courts Act, are briefly noticed, *ante*, p. 14; but, practically, very few were raised. One case only is reported—that of *Osmond* v. *Westlake* (1 C. C. Chron. 151), in which it appeared that an action was pending in the old County Court of Devon, and had proceeded so far as notice of trial, and an inquiry was made of the learned Judge, Mr. PRAED, whether the defendant could now be sued in this Court for the debt and costs incurred in the proceedings in the old Court. Mr. PRAED was of opinion that the debt could be sued for, but he had very great doubt as to the costs. But should not the action have been merely *continued*, and not *recommenced?* Might not the plaintiff have set it down for hearing as if it had been originally commenced there, and obtained upon his judgment an order for *all* the costs incurred? We think he might, under the provision of section 4, that "all proceedings commenced in the County Court of any county before the time when any Court shall be holden under this Act in such county, may be *continued, executed, and enforced* against all persons liable thereunto, in the same manner as if they had been commenced under the authority of this Act."

Osmond v. *Westlake* (1 C. C. Chron. 151).

In such a case it is, of course, necessary that the books of the old Court should be produced, in order to prove that the action was so pending, and its then state; and upon that a curious question was raised in Kent, before Mr. HARWOOD, in the case of *White* v. *Kerschner* (1 C. C. Chron. 104). The Clerk of the old Court of Requests had been subpœnaed to produce the Court books. Application was made for his costs as a witness, but the Judge refused, alleging that the new Court was entitled to the custody of the books. They were in the proper custody of the Commissioners, and not of the Clerk, and the 7th

White v. *Kerschner* (1 C. C. Chron. 104).

section of the County Courts Act transferred all their jurisdiction and authority to the County Court, and provided for the continuance therein of suits then pending. The old books were the record of these proceedings, which, being continued in the new Courts, required that it should have the possession of the books.

Partnership accounts

239. *Partnership Accounts.*—The 65th section expressly provides "that the jurisdiction of the County Court under this Act shall extend to the recovery of any demand, not exceeding the sum of twenty pounds, which is *the whole or part of the unliquidated balance of a partnership account.*" Thus, although, as we have already seen, a plaintiff having a larger demand than 20*l.* cannot deduct from it a debt due from him to the defendant, and bring an action for the balance, in case of partnership accounts this may be done, and an action maintained in the County Court for the balance, even if *unliquidated* (a term incorrectly used, because it properly means *unpaid*—but here, and in other legal uses, employed as equivalent to *unsettled*). Therefore, in a partnership account, whatever its length or amount, an action may be brought for a balance claimed, provided the claim is not for more than 20*l.* or, if he have a greater claim than that, the plaintiff must abandon the excess. For further information on this subject see the next chapter on "*Parties.*"

Legacies and property in intestacy.

240. *Legacies and Property in Intestacy.*—So, by the same section (65), jurisdiction is given to the County Court for the recovery of any demand not exceeding 20*l.*, which is "the amount or part of the amount of a distributive share under an intestacy, or of any legacy under a will." In like manner it matters not, in such case, what was the whole amount of the property so distributed, or of the legacies or legacy; the plaintiff may sue for the sum of 20*l.* if he is willing to abandon the excess.

Replevin.

241. *Replevin.*—The County Court has also jurisdiction in replevin, under sect. 121; but as this will form the subject of a future chapter, it will be unnecessary to notice it further here.

Recovery of tenements.

242. *Recovery of Tenements.*—By sect. 122 jurisdiction is given to the County Court in the recovery

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of small tenements. The practice in this will be fully stated in a subsequent chapter, and the section itself is given at length, *ante*, p. 214. But it will be necessary here to notice some questions that have arisen as to the jurisdiction in such cases. The first is, whether the Justices have still a concurrent jurisdiction with the County Courts in the recovery of tenements. As this is a question rather belonging to the Law of Magistrates than the Law and Practice of the County Courts, it will suffice here to state that the better opinion is, that the jurisdiction of the Justices is not taken away by the County Courts Act. Upon the words "when and as soon as the term and interest of the tenant of any house, land, or other incorporeal hereditament, where the value of the premises, or the rent payable in respect of such tenancy, did not exceed the sum of 50*l.* by the year, and upon which no fine shall have been paid, shall have ended, or shall have been duly determined by a legal notice to quit," which is the condition of this jurisdiction, one question has occurred that deserves notice. It was in the case of *Evans and another* v. *Walters* (1 C. C. Chron. 171), and turned upon this point. The defendant held under an agreement for three years, with a proviso for re-entry if the rent should be in arrear for fourteen days after it became due. The rent fell into arrear, and the question was, whether a tenancy expiring by force of a proviso for re-entry was within the jurisdiction given by the 121st section. The learned Judge, Mr. Herbert, decided that it did not come within the provisions of the statute. He said "he had not been able to find any case upon the Act, giving similar jurisdiction to Justices of the Peace, in which the same point had arisen; but the case of *Doe dem. Cundey* v. *Sharpley* (15 M. & W. 558), appeared to him to be a very strong authority in the defendant's favour. In that case it was expressly decided that the 1 Will. 4, c. 87, s. 1, did not apply where the tenant held under a lease which had not expired, but where a right of re-entry was claimed for nonperformance of the covenants. Now the words of that statute are almost identical with those of the County Courts Act. In that statute the clause runs, 'where the term or interest of any tenant, &c., shall have *expired*, or been determined by regular notice to quit.' In the statute giving him jurisdiction, the words were,

Evans v. *Walters* (1C.C.Chron 171).

'where the term or interest of the tenant, &c., shall have *ended*, or shall have been duly determined by a legal notice to quit,' &c. The only real difference consists in the substitution of the word 'ended' for the word 'expired;' which substituted word appeared to him to import, as fully as the word used in the former statute, that the term must actually have run out, and not be determined by a forfeiture. Following, then, the authority of the case which he had cited, and also bearing in mind that it was expressly enacted that this Court should not have cognizance of any action of ejectment, he was of opinion that this summons must be dismissed."

The other questions that have arisen, or are likely to arise, upon the recovery of tenements, with the practice and forms, will be given in a distinct chapter in a subsequent part of this treatise.

243. *Summonses on Judgments.*—By the 98th section jurisdiction is given to the County Courts over "any unsatisfied judgment or order in any Court held by virtue of this Act, or any Act repealed by this Act, for the payment of any debt or damages or costs." And the party who has obtained such a judgment may take out a summons against the defendant in any county *within the limits of which he* (*the defendant*) *dwells* or carries on his business, to answer "*such things as are named in the summons.*" And on his appearance he may be examined upon oath "touching his estate and effects, and the manner and circumstances under which he contracted the debt, or incurred the damages or liability which is the subject of the action in which judgment has been obtained against him; and as to the means and expectation he *then* had, and as to the property and means he still hath, of discharging the said debt or damages or liability, and as to the disposal he may have made of any property." And, by sect. 99, if he do not attend in pursuance of the summons, or "refuse to be sworn, or to disclose any of the things as aforesaid, or if he shall not make answer touching the same to the satisfaction of such Judge, or if it shall appear to such Judge, either by the examination of the party, or by any other evidence, that such party, if a defendant, in recovering the debt or liability which is the subject of the action in which judgment has been obtained, has

Summonses on judgments.

Summonses on judgments.

obtained credit from the plaintiff under false pretences, or by means of fraud or breach of trust, or has wilfully contracted such debt or liability, without having had at the same time a reasonable expectation of being able to pay or discharge the same, or shall have made, or caused to be made, any gift, delivery, or transfer of any property, or shall have charged, removed, or concealed the same, with intent to defraud his creditors, or any of them, or if it shall appear to the satisfaction of the Judge of the said Court that the party so summoned has then, or has had since the judgment obtained against him, sufficient means and ability to pay the debt or damages or costs so recovered against him, either altogether, or by any instalment or instalments which the Court in which the judgment was obtained shall have ordered, and if he shall refuse or neglect to pay the same as shall have been so ordered, or as shall be ordered, pursuant to the power hereinafter provided," the Judge may order such person to be committed to the "common gaol or house of correction of the county, district, or place in which the party summoned is resident, or to any prison which shall be provided as the prison of the Court, for any period not exceeding forty days:" (sects. 98, 99.)

The practice under these sections will form the subject of a distinct chapter in the second volume, where all the cases that have been decided upon it will come to be more properly noticed, and to that the reader is referred. But there is one point which is purely a question of jurisdiction, that has been raised in two cases reported in 1 Cox & Macrae, 25.

Gray v. *Giles* (1 Cox & Macrae, 25).

In *Gray* v. *Giles* (*Ib.*), which was a summons issued under the 98th section upon a judgment obtained in the old County Court of Gloucestershire, the Judge (Mr. FRANCILLON) said, "the Court has no jurisdiction; it has only jurisdiction in cases of judgments of this Court and the statutory Courts repealed by the Act. This judgment is not a judgment of any Court held by virtue of this Act, or under any Act repealed by this Act, and I cannot, therefore, proceed on it. The County Court of Gloucestershire is a Common Law Court, and is, consequently, not repealed." And the decision was the same in *Rudd* v. *Dobson* (1 Cox & Macrae, 25).

Rudd v. *Dobson* (1 Cox & Macrae, 25).

Hence the powers of sects. 98 and 99 can only be exercised over judgments obtained in the new County

Courts, or in the Courts comprised in schedules (A.) and (B.) For judgments obtained in any other Courts for less than 20*l.*, the remedy must be sought in the Small Debts Act, 8 & 9 Vict. c. 127, of which the above sections are almost a literal transcript, and under which a similar proceeding may be taken before any Judge of any Inferior Court, and, consequently, as we presume, before the Judge of the County Court, who would have the same powers under that statute as under the County Courts Act. And either should be exercised with careful reference to the decision in *Re Kinning* (1 Cox & Macrae, 1), that where a debt has been ordered to be paid by instalments under that statute, or imprisonment in default, and the defendant fails to pay one of the instalments, he cannot be imprisoned upon the original order, but must be summoned afresh, and a new order of commitment made for the nonpayment of that particular instalment. (See also Cap. 4 of this Book, "*As to Proceedings.*")

Re Kinning (1 Cox & Macrae, 1).

244. *Wages.*—By sect. 64 minors are empowered to sue for wages.

Sect. 64. And be it enacted, that it shall be lawful for any person under the age of twenty-one years to prosecute any suit in any Court holden under this Act for any sum of money not greater than twenty pounds which may be due to him for wages or piece-work, or for work as a servant, in the same manner as if he were of full age.

Section 64. Minors may sue for wages.

245. *Goods taken in Execution.*—By the 118th section, the County Courts are empowered to determine "any claim that shall be made to or in respect of any goods or chattels taken in execution under the process of any Court holden under this Act, or in respect of the proceeds or value thereof, by any landlord for any rent, or by any person not being the party against whom such process has issued." The following is the language of the section:

Sect. 118. And be it enacted, that if any claim shall be made to or in respect of any goods or chattels taken in execution under the process of any Court holden under this Act, or in respect of the proceeds or value thereof, by any landlord for rent, or by any person not being the party against whom such

Section 118. Claims as to goods taken in execution to be adjudicated in Court.

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process has issued, it shall be lawful for the Clerk of the Court, upon application of the officer charged with the execution of such process, as well before as after any action brought against such officer, to issue a summons calling before the said Court as well the party issuing such process as the party making such claim, and thereupon any action which shall have been brought in any of Her Majesty's Superior Courts of Record, or in any local or inferior Court, in respect of such claim, shall be stayed, and the Court in which such action shall have been brought, or any Judge thereof, on proof of the issue of such summons, and that the goods and chattels were so taken in execution, may order the party bringing such action to pay the costs of all proceedings had upon such action after the issue of such summons out of the County Court; and the Judge of the County Court shall adjudicate upon such claim, and make such order between the parties in respect thereof, and of the costs of the proceedings, as to him shall seem fit, and such order shall be enforced in like manner as any order made in any suit brought in such Court.

This also will form the subject of a distinct chapter on Interpleader in the next volume that treats of the Practice of the Courts, when the question of the priority of the landlord's claim for rent, and other points of practice that have arisen, will be fully considered.

We have now to notice a few miscellaneous points that have been mooted as to peculiar subject-matters which have been held to come within the jurisdiction of the County Courts.

Sham summonses.

246. *Sham Summonses.*—Where a sham lawyer had delivered to a person in the country a paper purporting to be a County Court summons, with a view to frighten him into payment of a debt demanded, and the plaintiff had consequently lost the time and expenses of a journey to the Court town, he was held to be entitled to damages. The reported case is that of *Davies* v. *Dawson* (1 C. C. Chron. 210), and is as follows:

Davies v. *Dawson* (1 C.C.Chron. 210).

The plaint was for "Journey and attendance, and expenses occasioned to the plaintiff and his wife by reason of the defendant serving a notice on the plaintiff requiring him to attend to pay a debt alleged to be due to the defendant from the plaintiff,

and which notice was intended to simulate and did simulate and appear to be a process out of the County Court of Denbigh, at Wrexham, 10s." The plaintiff was sworn. He produced a letter which he had received through the post-office, which was as follows:

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"(Royal arms.) New County Courts Act for the more easy Recovery of Small Debts and Demands, 9 & 10 Vict. c. 95. To William Davies. The sum of one pound and tenpence, due from you to Stephen Dawson, being still unpaid, I now inform you that if the same be not paid on or before Wednesday, the second day of February, 1848, I shall proceed against you under the above Act. I trust, however, you will deem it prudent to pay the amount before the day above stated, and thereby avoid the expenses to which you will otherwise subject yourself. I am, yours, &c.

"Ruabon. "STEPHEN DAWSON.

"Dated this 28th January, 1848."

In consequence of this letter, I directed my wife to attend at the County Court in Wrexham, in January last. I saw the royal arms, and the words "County Court," and in consequence directed my wife to go. There was an account between Dawson and myself.

The wife went accordingly, and for her time and expenses there was a judgment for the plaintiff.

247. *Overseers.*—In the case of *Atherill* v. *Cross* (1 C. C. Chron. 210), an action was successfully maintained against the overseers of a parish for damages for having wilfully, and with intent to injure the plaintiff, assessed his dwelling-house below its real value, so as to disqualify him from obtaining a licence for the sale of beer.

Overseers. *Atherill* v. *Cross* (1 C. C. Chron. 210).

248. *Infringement of a Registered Design.*—In the case of *Furnival* v. *Alcock* (1 C. C. Chron. 61), an action was supported for damages for infringement of a registered design.

Patents. *Furnival* v. *Alcock* (1 C.C. Chron. 61).

249. *Wages.*—In two cases the question has arisen whether the County Court can entertain a claim for wages after it has been heard and adjudicated upon by the Magistrates. In both it was held that by stat. 4 Geo. 4, c. 34, all orders or determinations by Jus-

Wages.

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Anon. v Oates and anor. (1 C. C. Chron. 154).

tices were final and conclusive. In the case of *Digmore v. Wallace* (1 C. C. Chron. 125), the point was at once conceded by the plaintiff. But in the case of *Anon. v. Oates and another* (1 C. C. Chron. 154), it was contended that the above statute applied only to cases where a formal decision had been come to, and an order made, not where there was merely a dismissal. But the learned Judge, Mr. STANSFIELD, after referring to the statute, said, that what the Magistrates had done must be presumed to have been done rightly. He thought the statute applied to a case like the present, the words being "order *or* determination" in the disjunctive. He could not put the limited construction on the word "determination" for which Mr. Holroyde had contended. He therefore gave a verdict for defendants.

Fees of Court.

Hanbury v. Aykroyd (1 C. C. Chron. 215).

250. *Fees of Court.*—In the case of *Hanbury v. Aykroyd* (1 C. C. Chron. 215), it was held that the Clerk may sue in his own Court for his fees, and, incidentally, the question was mooted whether the jurisdiction of the Court was ousted by proceedings taken to obtain a *certiorari*. But the learned Judge, Mr. TROTTER, negatived the objections, and gave judgment for the plaintiff. The case is curious, and therefore we present it entire.

Debt for 17*l.* for fees due to plaintiff as Clerk of the Court

Travers, of Campden, for plaintiff.

Griffiths for defendant.

The cause of action arose as follows:—Some time ago a considerable number of summonses had been issued against the defendant by one Grimbley; on the hearing of these causes the defendant contended that Grimbley could not split his demand, and asked for an adjournment to enable him to apply to the Court of Exchequer for a prohibition. The adjournment was granted, the fees on which, amounting to 17*l.* (the sum now demanded), the defendant has constantly refused to pay. It appeared, moreover, that since this summons was issued defendant had applied to the Court of Exchequer for a *certiorari* to remove the action to the Court above, and that the summons to show cause why the *certiorari* should not be granted was returnable this day. The case having been established, *Griffiths* contended:—

1st. That his Honor had no right to try the action, being a party interested.

2ndly. That his jurisdiction was ousted by the proceedings taken to obtain the *certiorari;* and

3rdly. That the fees ought to have been paid by Grimbley, the plaintiff, in the other causes.

Travers, in reply, contended that, under the 37th section of the Act, his Honor had a clear power to order payment of fees, and to enforce that order.

2ndly. That the summons from the Exchequer being obtained on an *ex parte* statement, and being a mere inchoate proceeding, did not deprive his Honor of his jurisdiction , and

3rdly. That as under the 37th section the *party making any application to the Court* is the party liable for the fees on such application, and as the application for adjournment was made by, and clearly for the benefit of, the defendant, he was the party against whom the order to pay should be made.

His HONOR gave judgment for the plaintiff for the full amount claimed and costs. (*a*)

Wickham v. Lee (1 C. C. Chron. 277).

251. *Double Value.*—It has been decided that the County Courts have jurisdiction in actions for double value. In the case of *Wickham* v. *Lee* (1 C. C. Chron. 277), it was so held by the Court of Queen's Bench, COLERIDGE, J. observing "Is the action for double value within the jurisdiction of the County Court? It is within the general words 'all pleas of personal actions,' and there are no express words to take it out. It is said that this is rather to be classed with *detinue*, and that *detinue* would not lie in the County Court, no process having been provided in that action; when that question arises, it will be time enough to decide it; but I may observe, that *detinue* is an anomalous and peculiar proceeding, and that as to the plaint for double value I entertain no doubt."

What actions will *not* lie in the County Court.

252. *What actions will not lie in the County Court.*—We come now to consider what actions *cannot* be brought in the County Court. This is provided by sect. 58, which, after enacting that all pleas of per-

(*a*) It would seem to be the proper course, where a party liable to pay fees to the Court refuses to do so, for the Judge to make an *ex parte* order for the amount, which, if disobeyed, may be enforced by summons or execution.

sonal actions may be holden in the County Court without writ, proceeds thus, "Provided always, that the Court shall not have cognizance of

Any action of ejectment,

Or in which the *title* to any corporeal or incorporeal hereditaments, or to any toll, fair, market, or franchise, shall be in question,

Or in which the validity of any devise, bequest, or limitation under any will or settlement may be disputed,

Or for any malicious prosecution,

Or for any libel or slander,

Or for criminal conversation,

Or for seduction,

Or for breach of promise of marriage."

253. *Generally.*—Jurisdiction is given over all pleas of *personal* actions, within the prescribed amount, subject to the above exceptions, and to no other. Therefore, although not expressly excepted, all actions that are not strictly "pleas of *personal* actions," are not within the jurisdiction. Actions, as before stated, are divided into *real, personal,* and *mixed.*

The first and third, therefore, are excluded from the jurisdiction of the County Courts.

Ejectment.

254. *Ejectment.*—The County Court cannot entertain an action of *ejectment.* But express powers are given to it for the recovery of tenements of a value or rent not exceeding 50*l.* per annum, by sect. 122: (see the chapter on this subject in vol. 2.)

Where title in question.

255. *Where title is in question.*—Nor can the County Court entertain any action in which "the title to any corporeal or incorporeal hereditaments, or to any toll, fair, market, or franchise shall be in question:" (sect. 58.)

Upon this provision many perplexing questions have already arisen, and must arise continually, from the difficulty of determining whether title is *really* in question; for it is plainly not sufficient for a defendant merely to assert that he disputes title in order to withdraw the case from the cognizance of the County Courts, or justice would be continually defeated. The Judge must be satisfied, not that the claim is in itself a good one, but that it is preferred with *bona fides*, and is sufficiently substantial to have an existence, however dubious may be its value, and he will

act accordingly, subject to the risk of a prohibition if he exceeds his jurisdiction. Book IV. The Jurisdiction. Cap. 2. As to the Subject-matter

For this purpose, he may hear the objection, and investigate the claim of title, so as to ascertain whether it be *bonâ fide* and substantial. For, to oust the jurisdiction, the title must be in dispute *in the action*: that is to say, *so* that the action could not be decided without directly or indirectly deciding the question of title. It is plain that the Court cannot ascertain whether title is really in dispute *in the action* so as to be unable to decide the action without deciding upon the *disputed title*, unless it institutes an inquiry into the facts. The Court, therefore, is, as we apprehend, empowered to hear and to decide whether the case is or is not within its jurisdiction.

Lilley v. *Harvey*. *Owen* v. *Pierce* (1 C. C. Chron. 282.)

This point has now been expressly determined by Mr. Justice Wightman, in the Bail Court, in the cases of *Lilley* v. *Harvey* and *Owen* v. *Pierce* (1 C. C. Chron. 282; 11 Law T. 273), in which it was held, that to oust jurisdiction under a claim of title in dispute, under sect. 58, the defence must be *bonâ fide*, and that it is competent to the Judge of the County Court to enter into the case, in order to determine whether or not the case is really within such proviso, the mere assertion of the defendant not being sufficient to oust jurisdiction. But if the Judge determines that he has jurisdiction when he has not, a prohibition will go. The judgment is as follows:

As to claim of title.

These are two cases as to the power of a Judge of the County Court to proceed after the defendant had stated that the question involved the right to incorporeal hereditaments. The question is, whether the title to the hereditaments came into question so as to take the cases out of the jurisdiction of the County Court. The demand was for use and occupation, and the defendant objected to the jurisdiction on the ground that he claimed the premises as his own, and consequently that the title was in question. The Judge of the County Court examined the defendant, who stated that he believed the premises were his, and he purchased them. The Judge went on with the case, and decided for the plaintiff, being of opinion that the title did not come in question, and I am of opinion there was no real ground for the objection. The defendant did not pretend that he had any conveyance, or that he had possession, or that

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Lilley v. *Harvey* (1 C.C. Chron. 282). As to claim of title.

he had paid for them. On the other hand, the plaintiff had been in possession for twenty-five years, he had a conveyance, and had paid the purchase-money, and the defendant, in 1842, had taken the premises of the plaintiff as tenant, and had paid rent to him till 1846; and it further appeared that, in June, 1847, the plaintiff had distrained the goods of the defendant for the arrears of rent, and the goods were sold without a replevin. On a subsequent occasion, when there was a question whether the defendant's son was not a joint tenant with him, the defendant had sworn that he had taken the premises alone. It was contended for the defendant, and this is common to both cases, that it was enough for the defendant to state on oath that he believed the premises were his, to bring the cases within the proviso, and that the Judge had no authority to interfere further. It appears to me that the Judge has authority to inquire whether or not the title is in question. It is difficult to define the limits to which his inquiry may go. It was hardly intended that the mere assertion of the defendant will suffice to take away the jurisdiction; the Judge must be satisfied that the title is in question, and he must inquire into so much of the case as to satisfy him upon that point. Where there are special pleadings, and the question is raised upon them, the Judge can go no further, but if the question is not raised upon the pleadings, but merely suggested by the defendant, the Judge must inquire into the case before he can be satisfied that the title can come in question. If he is wrong, and assumes a jurisdiction when the title is really in question, the defendant may come to a Superior Court, and he will be entitled to a prohibition. Each case must depend upon its own circumstances. The cases that have been decided on the 53 Geo. 3, c. 127, s. 7, are authorities for this view of the case. The terms of the provisoes in the two statutes are not the same, but the point in question is common to both. In the case of *Rex* v. *Wrottesley* (1 B. & Ad. 648), it was considered that the Justices must be satisfied that there is a *bonâ fide* intention to dispute a rate before they are bound to consider that the title was really in question. In the present case I consider the Judge of the County Court was right, and the rule must be discharged in *Lilley* and *Harvey* with costs.

I have more doubt with respect to the case of *Owen* and *Pierce*,

because there it appears there was an action of trespass for taking the plaintiff's cattle. The defendant, upon appearing in the Court, took an objection that he had a prescriptive right for his cattle to stray into the land of the plaintiff, there being a countervailing right on the part of the plaintiff that his cattle might stray into the lands of the defendant, and without there being a liability for trespass on either side. It is not necessary to decide the law upon the matter, the question before the County Court was, whether the claim of incorporeal hereditament did really come in question; the Court seemed to be of opinion that it did not come in question as between these parties. As is usual in these cases, the defendant made the objection and stated he claimed a right by prescription; for he adopts the very term suggested in the case in the Queen's Bench—prescriptive right for any cattle to stray on the plaintiff's land. On the other hand, there were some circumstances tending to show that there was no foundation for the objection taken by the defendant; and, in the first place, it seems that was the first time he had ever set up such a claim. It does not appear that he had ever, down to this time, claimed such a right; and it also appeared he had offered to give 5*s.* a year as compensation for the trespass, which the plaintiff had refused. I think, upon the whole, there is no sufficient ground for assuming that the title came in question. It is not for the Judge to determine whether the title was well founded, but whether it came in question. I must discharge the rule in both cases.

It is important to learn what is and what is not a question of title.

256. *What is a Question of Title.*—Generally the jurisdiction is ousted *in any action in which the title* to any corporeal or incorporeal hereditaments, or to any toll, fair, market, or franchise, *is in question.* A claim of *title* is a claim to the ownership, temporary or permanent—a claim to such a *right* of possession as would enable the claimant to keep possession, if he had it, without being a trespasser; and it must be a claim to the land itself, or to some easement arising out of it. Upon the Irish Civil Bill Act, 36 Geo. 3, c. 25, which enacts that in no civil bill shall title to lands be called in question, it has been held that a consequential injury arising from the obstruction of a (What is a question of title?)

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water-course was a question of title (*Whitehead* v. *Edwards*, Nap. C. B. 30): negligence in so cutting a mill-race that it flooded plaintiff's lands (*Goeghegan* v. *Milner*, Nap. C. B. app. 181): carrying away timber from land occupied by plaintiff, the defence being that it belonged to the defendant as landlord (*Ellison* v. *Robertson*, 1 C. & D. C. C. 557): trespass on a fishery under a claim of right (*Corr* v. *Donnelly*, 2 C. & D. C. C. 172): obstructing a water-course whereby plaintiff's land was flooded (*Orr* v. *Cahill*, 1 C. & D. C. C. 566): a dispute about a party-wall upon which a roof had been rested, and the defence was that no part of it was upon the plaintiff's land (*McAlister* v. *Duffy*, 1 C. & D. C. C. 179),—have all been held to involve questions of title.

What is *not* a question of title?

257. *What is not a Question of Title.*—As we have already observed, a mere *assertion* of a claim of title is not sufficient. *Some proof* must be given of its actual existence, in order that the Court may determine whether such a question arises *in the action*. And the claim must be of a *right* of ownership in the land, or in some easement arising out of it. Upon the 43rd Eliz. c. 6, which gives no more costs than damages in any action personal "not being for any title or interest of lands, nor concerning the freehold or inheritance of any lands," when the Judge shall certify that the debt or damages do not amount to 40*s*., it has been held that an action by one commoner against another for injury of the right of common by digging turves (*Edmondson* v. *Edmondson*, 8 East, 294): an action of trespass for a distress, the defendant justifying as agent, *and the issue joined upon the fact of agency* (*Howard* v. *Cheshire*, Say. Rep. 250): an action for taking sand and gravel from Hounslow Heath (*White* v. *Smith*, 1 Wils. 94),—did *not* involve questions of title.

These instances will suffice to show that title does not *necessarily* come in question because the subject of dispute is the freehold, or something that forms a part of the freehold. Every case must rest on its circumstances, the test being, not the nature of the subject-matter, but the nature of *the claim*. In the Superior Courts this would be for the most part determined by the pleadings, and upon them some of the above cited decisions turned. But in the County

Courts, in the absence of pleadings, the Judge must decide the claim of title upon *the evidence*, bearing in mind only that the point to be determined is not if there be a title *in fact*, but if title is so *in question in the action, that he could not decide the dispute without deciding the title.*

Two cases are reported as having occurred in the County Court in which this question of title has been raised, and as they will serve to illustrate the argument, they may be briefly noticed here.

In *Penfold and another* v. *Newland* (1 C. C. Chron. 123), the action was for damages for seizing a horse, and the defence was, that defendant was lord of the manor and had seized it for a heriot; to which it was replied, that the horse was the joint property of the plaintiffs, and that one of them only was tenant of the manor.

Penfold and anor. v. *Newland* (1C C Chron. 123).

The Judge (Mr. GURDON) said the question might be tried if the plaintiffs would admit that the defendant was lord of the manor, and that he was entitled as such to seize the horse in question as a heriot, provided that horse was the property of his tenant. If these facts were admitted, then the Court could try what appeared to be really the issue, whether the horse in question was the property of both or of only one of the plaintiffs.

Edmunds said he denied the right altogether; but for the purposes of this action he would make that admission, provided it did not bind his clients as to the right.

Johnson said the admission must be unqualified.

Edmunds said, then he should not make it, and the case was thereupon struck out, the Judge saying the Court was ousted of jurisdiction.

In the case of *Jenkins* v. *Evans* (1 C. C. Chron. 196), which was an action for the recovery of a tenement, and defendant had come into possession by the decease of the tenant a few days after the proper determination of the tenancy, it was held by Mr. JOHNES, that the Court would not recognize a merely equitable claim, and he proceeded to judgment.

Jenkins v. *Evans* (1C.C Chron. 196)

258. *Corporeal and Incorporeal Hereditaments.*—It will not be necessary in such a treatise as this to enter upon a definition of these terms, which must be sufficiently familiar to every reader. But, generally,

Corporeal and incorporeal hereditaments.

it may be said that whatever is a part of the freehold, or affixed to it, is a corporeal hereditament, and *without* the jurisdiction of the County Courts if the *title* to it be in dispute. But, if the fixtures be severed, trees cut, or roots dug up, they cease to be a part of the freehold, and a claim to them may be adjudicated upon in the County Courts. So may the *emblements* of land, that is, crops usually grown within the year: but crops that last more than a year, as grass, clover, and so forth, which are merely cut, but the roots remain for future crops, are part of the freehold.

Incorporeal hereditaments.

As to *incorporeal* hereditaments, there has been a decision in the Court of Exchequer which has determined that where an Act of Parliament authorizes the levying of certain rates to be paid by the tenant, who is to deduct the amount out of the rent, "notwithstanding any agreement to the contrary," that means any *present* agreement, and that the parties might afterwards agree between themselves how it shall be paid. A tenant who had paid the rate was held to be entitled to sue the landlord in the County Court for the recovery of the same, and that it was not a case in which an incorporeal hereditament was in question, so as to take it out of the jurisdiction of the County Court: (*Gwynne* v. *Knight*, 1 C. C. Chron. 189.)

Gwynne v. *Knight* (1 C.C.Chron. 189).

Lloyd v. *Jones* (1 Cox & Macrae, 111.)

In *Lloyd* v. *Jones* (1 Cox & Macrae, 111), it was held by the Court of Common Pleas, that the jurisdiction of the County Court in an action of trespass is not ousted by a plea that defendant committed the supposed grievance to raise a question of title, and in the exercise of a right he possessed by immemorial custom; that one person cannot have a *profit à prendre* in the soil of another; and that a custom of fishing cannot be considered an incorporeal hereditament within the meaning of the statute. The facts and the law are so well stated in the judgment, that we give it entire.

In this case a rule was obtained on the part of the defendant, calling upon the plaintiff to show cause why a writ of prohibition should not issue, to be directed to the Judge of the County Court of Merionethshire, to stay further proceedings in this case. The ground on which the defendant claimed to be entitled to the writ is, that the action is brought to recover damages for an alleged trespass, the defendant having entered

Lloyd v. *Jones* (1 Cox & Macrae, 111.)

the plaintiff's land and fished, or attempted to fish, there; the defendant contended that such act was done in the exercise of the right conferred on him as an inhabitant of the town of Bala, under an immemorial custom; and as the claim of right set up by the defendant under this custom may be disputed, it was contended that the jurisdiction of the County Court over the case was excluded by the statute 9 & 10 Vict. c. 95, s. 58, by which it is provided that the Court shall not have cognizance of any action in which a claim to an incorporeal hereditament may be disputed. The affidavits filed in support of the rule state the defendant to have been an inhabitant of the town of Bala, and that an immemorial custom exists there conferring the right before mentioned upon the inhabitants of that town, and that the alleged trespass was committed by the defendant at the instance or request of the several inhabitants associated there, for the purpose of asserting the existence and validity of the custom set up. The affidavits read in answer to the rule deny the existence of the custom in point of fact, and state that the defendant was not a householder; that he is a person having no visible means of support, and is wholly incompetent to pay any damages or costs which may be recovered against him. Having heard the arguments in support of the rule, we are of opinion the jurisdiction of the County Court over the case is *not* excluded by the proviso referred to in the statute 9 & 10 Vict. c. 95, s. 58, and that the rule must be discharged. The custom set up is in effect a custom for the inhabitants of Bala, as such, to have a *profit à prendre* in the soil of another; but we think no question can be said to arise in this case regarding such a custom, as it has been held as clear and undoubted law for two centuries, that no such custom can exist in point of law. The question was determined in the fourth year of James I., in *Gatewood's case* (6 Coke, 60, *a*), that such a custom is void in law; and since that case the law has been considered as settled, and is not now open to question or doubt. The jurisdiction of the Court cannot be excluded by a pretence of a custom which has been so long and solemnly determined to have no valid existence. But further, supposing any question could arise regarding the custom, still the circumstances would not bring the case within any of the cases over which the jurisdiction of the County Court is excluded by the 58th section, referred to, inasmuch as that section excludes the jurisdiction in cases involving disputed claims to incorporeal hereditaments; and the claim in question is not properly a claim to a hereditament. Hereditament is defined in the text-books and authorities to signify all such things, whether corporeal or incorporeal, which a man may have to him and his heirs, by way of inheritance, which, if they were not otherwise bequeathed, would come to him, that is, as next of blood, and not pass to executors and administrators as chattels do: (see Termes de Ley, Co. Lit. 6 *a*, and Co. Lit. 6 *b*.) It is obvious the right claimed under the

custom alleged is not a claim to a hereditament, and therefore not such as to exclude the jurisdiction of the County Court; the rule, therefore, must be discharged with costs.

Hereditaments.—An action was brought in the Whitechapel County Court for the amount of certain paving rates imposed by an Act of Parliament. A question arose as to the situation of the premises on which the rate was imposed. The defendant contended that this was a claim to an incorporeal hereditament, and was not, therefore, within the jurisdiction of the Court. After judgment for the plaintiff, the defendant obtained a prohibition out of Chancery, which was, however, set aside by the Court of Exchequer, that Court being of opinion that the rate was a mere money payment, and not an incorporeal hereditament: (*Baddeley* v. *Denton*, 14 L. T. 256.)

Fair, toll, market, or franchise.

259. *Fair, Toll, Market, or Franchise.*—The jurisdiction of the County Court is ousted also where the title "to any toll, fair, market, or franchise shall be in question." It will be unnecessary to lumber these pages with definitions of those terms: the practitioner requiring the information will find it in Stephens' Commentaries, vol. 2, pp. 14, 15, 123, 535, and vol. 3, pp. 257, 268.

Where the validity of any devise, bequest, &c. may be disputed.

260. *Or where the Validity of any Devise, Bequest, &c., may be disputed.*—Another exception to the jurisdiction by the same section (the 58th), is that of any action "in which the validity of any devise, bequest, or limitation under any will or settlement *may be disputed.*"

It is to be observed that the language of the statute differs in relation to questions of *title*, and questions as to the *validity* of a devise, &c. The exception in the one is, where the title, &c., "*shall be in question,*" and in the other, where the validity, &c., "*may be disputed.*" This, as it appears to us, will require a distinction in the treatment of the two cases. To oust jurisdiction on the ground of *title*, that title must be *in question* in the action; but in the case of "a devise, bequest, or limitation under will or settlement," being necessary to be produced in order to establish the debt or demand, it will suffice for the other party to assert that he disputes the validity of such devise, &c., in order to take the case out of the jurisdiction of the

County Court, so far, at least, as respects the reference to the document so disputed. In the one the Judge must hear and be satisfied that the title is really *in question in the action*. In the other it will suffice that one party says, "I dispute the validity of that devise, &c.," to take it out of the jurisdiction, without any decision by the Court whether there is or is not a *boná fide* substantial ground for such dispute. If the case does not, in fact, depend upon the validity or otherwise of such disputed document, and the Court can arrive at a decision by other evidence, we presume that it may do so. The jurisdiction is only ousted where the subject-matter of the action is something that depends upon the validity of a devise, bequest, or limitation under a will or settlement, which is disputed by the party against whom it is to be enforced.

Other excepted personal actions.

261. *Other excepted Personal Actions.*—The other exceptions by the statute from the jurisdiction of the County Courts are actions "for any malicious prosecution, or for any libel or slander, or for criminal conversation, or for seduction, or breach of promise of marriage." It will, we presume, be unnecessary to define these.

262. *As to Actions for Debts, &c. within the Jurisdiction of the County Courts.*—If a party sue in the Superior Court for a debt or demand recoverable in the County Court, and obtain a verdict for less than 20*l.* if the action be founded in contract, or for less than 5*l.* if it be founded on tort, he will have judgment to recover such sum only *and no costs.* And if the verdict be for the defendant, such defendant is to be entitled to his costs as between attorney and client, unless in either case the Judge who tries the cause shall certify on the back of the record that the action was fit to be brought in a Superior Court. The following is the language of the section:

Section 129.

As to actions brought for small debts in Superior Courts.

Sect. 129. And be it enacted, that if any action shall be commenced after the passing of this Act in any of Her Majesty's Superior Courts of Record, for any cause other than those lastly herein-before specified, for which a plaint might have been entered in any Court holden under this Act, and a verdict shall be found for the plaintiff for a sum less than twenty pounds, if the said action is founded on contract, or less

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than five pounds if it be founded on tort, the said plaintiff shall have judgment to recover such sum only, and no costs; and if a verdict shall not be found for the plaintiff the defendant shall be entitled to his costs as between attorney and client, unless in either case the Judge who shall try the cause shall certify on the back of the record that the action was fit to be brought in such Superior Court.

As this is a question of extreme importance to the practitioner, it will require careful attention.

The terms are "for *any cause* other than those lastly herein-before specified," (that is to say, the causes in which, by sect. 128, a concurrent jurisdiction is given to the Superior Courts, "where the plaintiff dwells more than twenty miles from the defendant, or where the cause of action did not arise wholly or in some material point within the jurisdiction of the Court within which the defendant dwells or carries on his business at the time of the action brought, or where any officer of the County Court shall be a party), *for which a plaint might have been entered* in any Court holden under this Act."

The question will arise here, for what causes it may be deemed that a *plaint* might have been entered so as to deprive the plaintiff of costs if he fails to recover more than 20*l.* in contract, or 5*l.* in tort. If, for instance, his demand be for several matters, together exceeding 20*l.*, but each one less than 20*l.*, it is necessary to determine whether he *might* have sued for all in the County Court, or if he *must* so have sued. If, for instance, he should join them in the Superior Court, it may be contended that, being distinct causes of action, he *might have entered a plaint for each case separately in the County Court,* and, as he *might* have so done, he is, by this section, deprived of his right to costs in the Superior Court. On the other hand, if he divides them improperly for the purpose of bringing several actions in the County Court, he runs the risk of losing the excess beyond the sum he would there be permitted to recover.

Again, where defendant owes plaintiff more than 20*l.*, but plaintiff owes defendant a sum, say 10*l.*, which would reduce the balance to less than 20*l.*, plaintiff might yet bring his action in the Superior Court, because his demand is for the whole amount

of the debt, and the set-off is a privilege of the defendant, which he may use or not at his pleasure, and in such case the plaintiff's claim is *not* one for which a plaint *might* have been entered in the County Court.

263. *Concurrent Jurisdiction of the Superior Courts.*—From the above section, then, it may be gathered that the Superior Courts have a concurrent jurisdiction with the County Courts in all cases. The Superior Courts will not, however, entertain an action to recover a less sum than 40*s.*: (*Sutton* v. *Parment*, 1 Cox & Macrae, 237.) A plaintiff may, if he pleases, still sue in the Superior Court in every case, provided he is willing to sacrifice his costs if he succeeds, and to risk the payment, should he fail to obtain a verdict, of the costs of the defendant, to be allowed as between attorney and client.

Concurrent jurisdiction of the Superior Courts.

But it is *at his option* to sue in the Superior Court or in the County Court in all actions for *torts* where he recovers a sum exceeding 5*l.* and not exceeding 50*l.* And in all actions *ex contractu* where he recovers a sum exceeding 20*l.* and not exceeding 50*l.* But it is enacted by 13 & 14 Vict. c. 61, ss. 11, 12, and 13, that if in any actions commenced after the passing of that Act in any Superior Court the plaintiff shall recover a sum not exceeding 20*l.* in any action *ex contractu* within the jurisdiction of the County Court, or a sum not exceeding 5*l.* in any action for *tort* within the said jurisdiction, he shall not recover any costs.

Except—

1st. In the case of a judgment by default.

2nd. Where the Judge or other presiding officer before whom such verdict shall be obtained shall certify on the back of the record that it appeared to him at the trial that the cause of action was one for which a plaint could not have been entered in any such County Court as aforesaid, or that it appeared to him at the trial that there was a sufficient reason for bringing the said action in the Court in which the said action was brought.

3. Where the plaintiff shall make it appear to the satisfaction of the Court in which such action was brought, or a Judge at chambers, that the said action was brought for a cause in which concurrent jurisdiction is given to the Superior Courts by 9 & 10 Vict.

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c. 128 (as to which see *ante*, p. 201), or for which no plaint could have been entered in any such County Court, or that the said cause was removed from a County Court by *certiorari*.

Jurisdiction by consent.

263*a*. ***Jurisdiction by Consent.***—Sect. 17 of 13 & 14 Vict. c. 61, provides that the County Court may, by consent of both parties, try actions to an unlimited amount, and such as involve questions of title. The section is as follows:

13 & 14 Vict. c. 61, s. 17. In certain cases on agreement of the parties, Court shall have power to try causes although the matters be beyond its jurisdiction

Sect. 17. And be it enacted, that if both parties shall agree, by a memorandum signed by them or by their attorneys, that the County Court shall have power to try any of the actions hereinbefore respectively mentioned, in which the sum sought to be recovered shall exceed the sum of five pounds by the said recited act or fifty pounds by this act limited in the case of such actions respectively, or any action in which the title to land, whether of freehold, copyhold, leasehold, or other tenure, or to any tithe, toll, market, fair, or other franchise, shall be in question, then and in such case the said Court shall have jurisdiction and power to try such action: provided always, that the said parties or their attorneys shall state in their said memorandum of agreement, that they know such cause of action to be above the said sums respectively, or that they know such title to come in question in such action, and provided that such memorandum shall be filed with the clerk of the said Court at the time of filing the demand of the plaintiff: provided also, that all local actions to be tried before any County Court with the consent of the parties shall be brought and tried in that jurisdiction only in which the lands, tenements, or hereditaments, or some part thereof are situate, are in respect whereof such actions shall be brought.

The following may be the

Form of Memorandum.

Memorandum of agreement made this day *of* , *between* A. B., *of* , *in the county of* , *and* C. D., *of* , *in the county of* . *Whereas disputes have arisen between the said* A. B. *and*

C. D., *by reason of a certain demand by the said* A. B. *upon the said* C. D. *of a sum exceeding the sum of* 50*l.*, *to wit, the sum of* £ , *in respect of a certain alleged* [*debt or demand*, *trespass*, or as the case may be,] *it is hereby agreed between the said* A. B. *and* C. D. *that the County Court of* A. *at* B., *shall have power to try the said alleged* [*debt* or *demand*, *&c.*], *and the said* A. B. *and* C. D. *do hereby state that they know that such cause of action is above the sum of* 50*l.* *Witness the hands of the said parties.*

(*Signed*) A. B.,
C. D.

Witness ———.

WHERE TITLE IS INTENDED TO BE TRIED.

Memorandum of agreement made this *day of* , 18 , *between* A. B. *of* , *in the County of* , *and* C. D. *of the same place*, . *Whereas a dispute has arisen between* , *respecting the title* [or *which involves questions that relate to the title*], *to a certain* [here describe property in dispute], *it is hereby agreed between the parties hereto that the County Court of* , *in the County of* , *shall have power to try the same by an action in the said County Court, and the said* A. B. *and* C. D *do hereby state that they know that such title will come in question in such action.* *Witness the hands of the said parties.*

(*Signed*) A. B.,

Witness ———. C. D.

CAP. III.

AS TO THE PARTIES.

We take the provisions of the statute as to the parties to certain particular actions in the order in which they present themselves.

Minors.

264. *Minors.*—By sect. 64 minors are empowered to prosecute any suit in the County Court for any sum not exceeding 20*l.* for wages due, or piece-work, or work as a servant.

Section 64.

Minors may sue for wages.

Sect. 64. And be it enacted, that it shall be lawful for any person under the age of twenty-one years to prosecute any suit in any Court holden under this Act for any sum of money not greater than twenty pounds which may be due to him for wages or piece-work, or for work as a servant, in the same manner as if he were of full age.

This provision, in fact, extends to the County Courts a jurisdiction previously given to a Magistrate.

Partners.

265. *Partners.*—By sect. 65 it is enacted "that the jurisdiction of the County Court under this Act shall extend to the recovery of any demand, not exceeding the sum of 20*l.*, which is the whole or part of the unliquidated balance of a partnership account." Hitherto, as the reader is aware, a partnership account, however trifling, has been cognizable only by a Court of Equity. Until it had been settled, and a balance agreed to, from which a distinct promise from the one party to pay it to the other might be inferred, so as to create a new cause of action, distinct from the partnership, the Courts of Common Law have afforded no remedy. For this defect, provision to a limited extent has been made by the County Courts Act, and now a partner may there sue his partner for the unliquidated balance of a partnership account, not exceeding the sum of 20*l.* But this

privilege is subject to the same restrictions as other debts and demands, viz., that the cause of action shall not be divided for the purpose of bringing two or more suits, and if the plaintiff have a larger claim than 20*l.* he must abandon the excess, and the judgment will be in full discharge of all demands in respect of his partnership accounts. (Sect. 63.)

This provision has given rise to a very curious question, and led to an unexpected result. A Court of Common Law having no jurisdiction over partnership accounts, will not in any manner interpose with the Judge of the County Court in relation to a partnership account, however much he may exceed his jurisdiction. In fact, in this particular the County Court has an absolute and irresponsible authority for which, however abused, there is no remedy. This very important point was determined in the case of *Durant and others* v. *Tomlin* (1 C. C. Chron. 278; 1 Cox & Macrae, 129), which was as follows:

Durant and ors. v. *Tomlin* (1 C.C. Chron. 278).

In this case a rule *nisi* for a *certiorari* had been obtained to remove into this Court a plaint entered in the Barnet County Court for Hertfordshire. The defendant was sued as a member of the Barnet Association, by the other members for 18*l.* for his proportion of loss upon the transactions of the Association down to a certain period, the 65th section of the 9 & 10 Vict. c 95, enacting, "that the jurisdiction of the County Court under this Act shall extend to the recovery of any demand not exceeding the sum of 20*l.* which is the whole or part of the unliquidated balance of a partnership account," &c.

Howarth showed cause, and contended that as this was a question between partners, the Superior Courts could not entertain it; and that if the cause were to be removed, the plaintiffs would inevitably fail, from a want of jurisdiction, and that therefore the *certiorari* ought not to be granted.

T. W. Saunders, in support of the rule, argued that it never could have been the intention of the Legislature to give to the County Courts jurisdiction in cases involving often such difficult and nice questions of law as those of partnership, and to prevent this Court from exercising its supervision; but that if any real difficulty presented itself from the want of jurisdiction in this Court, it was removed by the 95th section, which, on the removal of a cause, enabled the judge to impose such

terms "as to payment of costs, giving security for debt and costs, or such other terms as he shall think fit," the defendant being ready to undertake not to raise any objection to the jurisdiction of the Court to entertain the cause.

LORD DENMAN, C. J.—I do not see how we are to deal with the cause when it *is* removed—all we could do would be to send it to Chancery to be disposed of. The undertaking of the defendant not to raise any objection would not be sufficient, if the other side does not consent.

Co-contractors.

Heginbottom v. Hague (1 C.C.Chron 266).

266. *Co-Contractors.*—In the case of *Heginbottom v. Hague* (1 C. C. Chron. 266), which was an action for contribution where one partner had been sued. for a joint debt, and satisfied the judgment, and now sought to recover, under the provisions of the present section, the defendant's share of the money so paid, it was contended for the defendant, that the provisions of the section did not apply to cases of partnership, but only to co-contractors, in the limited sense of the term, and that the contribution intended by the statute was such only as already existed at Common Law between such as had been made defendants in the original suit. The difference was, that whereas at Common Law all co-contractors must be joined in the action, the County Courts Act permits them to be sued separately, giving to the party sued the power to enforce contribution against his co-contractors by the same process. On the other hand, it was contended that the words of the statute were so comprehensive as to embrace the case of a partnership, and such was the opinion, though not without some hesitation, of the Judge (Mr. YATES). He said, "After mature consideration I have come to the same opinion, although, as I must admit, my first impressions were rather the other way. Section 68 of the County Courts Act comprises two distinct and independent enactments, but so connected with each other in phraseology as to become subject to the same rules of interpretation. By the first, a plaintiff is enabled to sue one of several persons 'jointly liable,' without encountering the risk and delay which, in the Superior Courts, would arise from a plea in abatement for nonjoinder. By the second, 'every such person,' after having complied with a specified condition, is enabled to recover contribution

Heginbottom v. Hague (1 C. C. Chron. 266).

from 'any other person jointly liable with him.' There is nothing in the Act which exempts partners from the operation of the former enactment, nor was it alleged that they were so exempt; and it would scarcely be in accordance with the general rules of interpretation, or with common sense, to give to the words 'jointly liable,' in the latter enactment, a more limited operation than that which they possess in the former. Upon this ground, therefore, alone, the plaintiff must recover. Again, admitting, with Mr. Taylor, that the words of a statute must not be strained beyond their ordinary meaning, in derogation of established principles, another rule, equally well established, must not be forgotten, to the effect that an Act of Parliament must be so construed as to give some operation to every part of it, except where clauses are plainly and irreconcilably at variance with each other or with the constitution. And in reference to this portion of the argument, I must observe that I can find no authority for Mr. Taylor's position that at Common Law the right to contribution did not exist between contractors, unless the person sued for contribution had been made a defendant in the original action. On the contrary, in *Holmes* v. *Williamson* (6 M. & S. 158); *Burnell* v. *Minot* (4 Moore, 340); and *Pearson* v. *Shelton* (1 Mees. & W. 504), which are the leading cases upon the subject, the defendant had not been a party to the original suit; nor can I see how in an action for money paid to the use of the defendant, in which form contribution is alone recoverable, the allegation suggested by Mr. Taylor would be necessary. Unless, therefore, partnership cases fall within the latter part of this section, its effect would seem to be nugatory, or merely a declaration of the Common Law. Upon this ground, therefore, likewise, the plaintiff must recover. Something also was said of the hardship to which my construction of this enactment would give rise. The argument *ab inconvenienti* can have little effect in construing an Act of Parliament. If the Acts of the Legislature work an injustice, the Legislature must find the remedy. A Court of Law must interpret the law as it finds it. But in the present case I am disposed to think a different interpretation from that which I now give to the section in question would produce a greater amount of evil. The judgment,

therefore, will be for the plaintiff, and I have given that judgment at some length, both because this is the first occasion upon which I have been called to give an opinion upon the section in question, and because that opinion differs from the first impression which I had formed, and which I intimated at the hearing." Nevertheless, we cannot but express our opinion that the point is extremely doubtful, and still open to argument.

267. *Executors and Administrators.*—By sect. 66 executors and administrators are empowered to sue and be sued in the County Courts, in like manner as parties in their own right; and execution is to be such as would be given in the like case in the Superior Courts: (see *Practice*, post.)

Section 66.

Executors may sue and be sued.

Sect. 66. And be it enacted, that it shall be lawful for any executor or administrator to sue and be sued in any Court holden under this Act in like manner as if he were a party in his own right and judgment, and execution shall be such as in the like case would be given or issued in any Superior Court.

268. *No Privilège allowed.*—By the 67th section it is provided that no privilege shall exempt any person from the jurisdiction of the County Courts.

Section 67.

No privilege allowed.

Sect. 67. And be it enacted, that no privilege, except as hereinafter excepted, shall be allowed to any person to exempt him from the jurisdiction of any Court holden under this Act.

It is upon this provision that the question has arisen as to the privilege of attorneys still to sue and be sued in their own Courts, in spite of the apparently explicit language of the County Courts Act. The argument was, that it having been decided that privilege could not be taken away but by expressly naming the privilege so intended to be abolished, and the language of the 67th section being general and not particular, it did not affect the privilege of an attorney.

Lewis v. *Hance* (1 Cox & Mac. 66).

But it was determined in the case of *Lewis* v. *Hance* (1 Cox & Macrae, 75), and *Jones* v. *Brown* (1 Cox &

Macrae, 102), that although the privilege *to sue* remained unaffected by the statute, the privilege of *being sued* in their own Courts was taken away. Now, however, the privilege of attorney, *plaintiff* as well as defendant, has been taken away by 12 & 13 Vict. c. 101, s. 18, which enacts:

Sect. 18. That no privilege shall be allowed to any attorney, solicitor, or other person, to exempt him from the provisions of this Act, or the said Act for the more easy Recovery of Small Debts and Demands in England. 12 & 13 Vict. c. 101, s. 18.

And by 13 & 14 Vict. c. 61, s. 11, it is provided, "that a plaintiff shall not be entitled to costs by reason of any privilege, as attorney or officer of such court or otherwise."

269. *One of several Parties liable.*—The 68th section makes a very useful provision for cases in which, where more persons than one are liable, it may be difficult to find both of them, or one may be out of the jurisdiction. In such cases the plaintiff is empowered to sue, or serve process on, one only, and judgment and execution may be had against that one, although the others may not have been sued or served, or may be out of the jurisdiction, and, in such case, the party against whom the judgment is obtained and by whom it was satisfied, "may demand and recover in the County Court, under this Act, contribution from any other person jointly liable with him." This important section is as follows:

Section 68. — One of several persons liable may be sued.

Sect. 68. And be it enacted, that where any plaintiff shall have any demand recoverable under this Act against two or more persons jointly answerable, it shall be sufficient if any of such persons be served with process, and judgment may be obtained and execution issued against the person or persons so served, notwithstanding that others jointly liable may not have been served or sued, or may not be within the jurisdiction of the Court; and every such person against whom judgment shall have been obtained under this Act, and who shall have satisfied such judgment, shall be entitled to demand and recover in the County Court under this Act contribution from any other person jointly liable with him.

In all cases of joint liability it would, therefore, be most prudent to sue one defendant only, choosing, of course, the most accessible, and the most solvent.

Insolvents.

270. *Insolvents.*—In consequence of a decision of the Common Pleas, it had been much questioned whether a final order in insolvency was a bar to an action against the insolvent in the County Court, it having been reported to have been holden by the Superior Court that, although the final order operated to protect *the person,* it did not protect *the property* of the insolvent. That point, however, has now been settled by overruling, or rather explaining, the judgment of the Court of Common Pleas. A brief statement of the argument and its result will be necessary.

The case of *Toomer* v. *Gingell* (3 C. B. 322), decided that a final order in insolvency, under stat. 7 & 8 Vict. c. 96, protected *the person,* but not *the property* of an insolvent.

Jacobs v. *Hyde* (1 C. C Chron. 299; 11 L. T. 332).

In the case of *Jacobs* v. *Hyde* (11 Law T. 332; 1 C. C. Chron. 299), the Court of Exchequer has determined that the case in the Common Pleas has been misunderstood, and that the statute in question operated to protect *both* property and person.

Plea of final order in insolvency a bar.

The question arose out of the construction of *two* statutes, the 5 & 6 Vict. c. 116, and the 7 & 8 Vict. c. 96. By the first, protection was given to the person and property of the insolvent, and the final order was specifically declared to be a sufficient plea in bar to an action for a debt contracted before the filing of the petition.

But the second statute, which was to amend the first, gave to the commissioner the power of correcting the schedule where there was error, but no fraud, and enacted that "the insolvent should in such case be entitled to every benefit and protection of the said recited Act and of this Act:" (sect. 30.) It was also enacted, by section 70, that nothing therein was to be construed "to repeal, affect, or in any manner alter the provisions of the said recited Act, except so far as herein above expressly provided, or except so far as the provisions of the said recited Act may be *inconsistent with,* or at *variance with,* the provisions of this Act."

But, by section 22, it is provided that "the final order to be made under the provisions of the said

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Act, as amended by this Act, *shall protect the person* of the petitioner from being taken or detained under any process whatever."

The point at issue was, upon these sections, whether the provisions of the second statute (7 & 8 Vict. c. 96), were *inconsistent* or *at variance* with the provisions of 5 & 6 Vict. c. 116.

Jacobs v. *Hyde* (11 L. T. 332; 1 C. C. Chron. 299).

In *Toomer* v. *Gingell* they were held to be so: at least, such was *the seeming* result of the decision. But, in truth, it was *not* so decided; for in that case the plea was not framed upon the 10th section of the first Act, but upon the final order under the Amendment Act. The Court held, that such an order was applicable, *under that statute*, only to the person, the section upon which it was framed containing no provision extending the protection further. In the case of *Jacobs* v. *Hyde*, however, the plea was properly framed upon the 10th section of the first Act, and the Court of Exchequer held that the second statute contains nothing *inconsistent* or at *variance* with the 10th section of the first statute, so as to operate as a repeal of its provisions, and, consequently, that the plea is good, and the final order, *under the 10th* section of 5 & 6 Vict. c. 116, is still a plea in bar to an action for a debt contracted before the date of filing the petition, protecting *property* as well as *person*.

271. *Who may appear for Parties in the County Courts.*—The 91st section provides for the appearance of parties by counsel or attorney, thus:

Section 91. — Who may appear for any party in the Superior Courts.

Sect. 91. And be it enacted, that no person shall be entitled to appear for any other party to any proceeding in any of the said Courts unless he be an attorney of one of Her Majesty's Superior Courts of Record, or a barrister-at-law instructed by such attorney on behalf of the party, or, by leave of the Judge, any other person allowed by the Judge to appear instead of such party; but no barrister, attorney, or other person, except by leave of the Judge, shall be entitled to be heard to argue any question as counsel for any other person in any proceeding in any Court holden under this Act; and no person, not being an attorney admitted to one of Her Majesty's Superior Courts of Record, shall be entitled to have or recover any sum of money for appearing or acting on behalf of any other person in the

said Court; and no attorney shall be entitled to have or recover therefore any sum of money, unless the debt or damage claimed shall be more than forty shillings, or to have or recover more than ten shillings for his fees and costs, unless the debt or damage claimed shall be more than five pounds, or more than fifteen shillings in any case within the summary jurisdiction given by this Act; and in no case shall any fee exceeding one pound three shillings and sixpence be allowed for employing a barrister as counsel in the cause; and the expense of employing a barrister or an attorney, either by plaintiff or defendant, shall not be allowed on taxation of costs in the case of a plaintiff where less than five pounds is recovered, or in the case of a defendant where less than five pounds is claimed, or in any case unless by order of the Judge.

The Courts, with the single exception, we believe, of Bristol, have properly enforced, with the utmost strictness, this provision; and, except under very peculiar circumstances, have refused leave to any other person than an attorney, or a barrister, instructed by an attorney, to appear for any party. Each part of this section has given rise to some questions, and, therefore, we will consider each separately.

Attorney or counsel entitled to appear.

1. "*No person shall be* entitled to appear *for any other party to any proceeding in any of the said Courts unless he be an attorney of one of Her Majesty's Superior Courts of Record, or a barrister-at-law,* instructed by *such attorney on behalf of the party.*"

An attorney or counsel, therefore, is *entitled* to *appear* for any other party, without leave of the Judge, although he may not, without permission, "argue any question as counsel." As these last words are restrictive, they will be construed strictly, and counsel or an attorney will, therefore, be *entitled* to do all in the conduct of a cause but *argue* it, even without the consent of the Judge;—as to appear and examine witnesses.

But it is to be observed, that the Act distinctly declares that a barrister-at-law *shall be instructed by an attorney;* he cannot receive his instructions from the client directly; *the etiquette* of the Superior Courts has been made *the law* of the County Courts. The language of the statute is in this respect suffi-

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ciently explicit; and the point has actually arisen and been so decided by Mr. CARROW, in the case of *Custard* v. *Rendall* (1 Cox & Macrae, 49).

2. "*Or, by leave of the Judge, any other person, allowed by the Judge to appear instead of such party.*"

By leave of the Judge any other person may appear.

Thus, a discretion is given to the Judge to permit any other than a barrister or an attorney *to appear* for a party; but the circumstances should be extremely strong to sanction the relaxation of so wholesome a rule. It is most important that the County Courts should preserve the respect of the public, and this they would not do, if the proceedings were to be conducted differently from those which the public are accustomed to witness in other Courts. The immediate consequence of permitting other than professional persons to appear for the parties would be the springing up of an army of sham lawyers, to prey, unrestrained by any responsibilities, upon the suitors, and to drive from the Courts all respectable members of the profession, who would not submit to be brought into conflict with such disreputable personages as they would be compelled there to meet.

These considerations cannot be too strongly impressed upon the Judges of the County Courts, that they may be induced to resist the continual temptations that offer to relax the rule in favour of particular cases, where it may appear to operate hardly. But, when once the rule is broken, it is so difficult to draw distinctions, and the inducement is so strong to extend the relaxation by almost imperceptible degrees, that the prudent and proper course will be to adhere to it in all its strictness, and in *no case* to permit a party to appear but by counsel or attorney; or, at furthest (upon proof of illness or unavoidable accident), *by a member of his family*. We will briefly state what are the reported decisions of the Courts upon this subject.

In many of the Courts a rule has been adopted, which it would be desirable to adopt in all, namely, a Court roll has been provided, and those attorneys only who sign it are considered as attorneys of the Court, and permitted to *argue* there. The rule was so laid down by Mr. WILSON at Swansea, as reported in 1 C. C. Chron. 18. Mr. KOE, in Bedfordshire, (1 C. C. Chron. 18), also expressed his "high approval of a Court roll being kept."

In *Davies* v. *Jones* (1 C. C. Chron. 170), Mr. Johnes laid it down as a rule that he should inquire of an attorney, appearing for a suitor, whether he appears as an attorney or as an advocate only. The reasons were thus stated:

Davies v. *Jones* (1 C. C. Chron. 170).

The Court.—It is necessary to know whether the gentlemen who appear for the parties are acting as their attorneys or merely as advocates. This has arisen from some services of notices, &c. having failed, in consequence of the attorneys stating that they merely appeared as advocates in the cause. I have therefore desired the Clerk to ask each attorney that appears, whether he is acting as attorney or merely as advocate.

To which the reporter subjoins the following note:

Quære—Can an attorney be considered in strictness merely as an advocate? His right of advocacy is in respect of being "an attorney,"—none others, except barristers, being permitted to appear in this Court; so that he appears in each case to advocate it as an "attorney," and then as he appears *for* the party it must be as "*attorney for* that party," and that even though he only happens to be the agent of another attorney who employs him to speak. An entry was generally made on the Court-books of this Court, "appeared by A. B., attorney," or "appeared by C. D., barrister, and E. F., attorney," or "appeared by A. B, advocate." In this case Mr. Evans was not acting as agent for another attorney, and the Clerk of the Court entered the appearance as "by advocate Mr. Evans." In some cases the entry was "by attorney and advocate Mr. Smith." It was understood amongst the professional men, that in future there would be but few "attorneys" conducting cases in Court; they would be almost all "advocates" merely, as then they considered there would be no liability on them for the Court-fees.

272. *Pre-audience.*—The right of counsel to exclusive audience and pre-audience in the County Courts has been much considered, and the general conclusion appears to be, that they should not have either *pre-audience* or *exclusive audience.* Thus, Pre-audience

Claim of counsel to exclusive audience.

Mr. FRANCILLON, in Gloucestershire, is reported, in 1 C. C. Chron. 24, to have refused pre-audience to counsel. But this appears to have been a general rule, that he would not give precedence to any cases in which professional men were engaged over others in which the parties were not represented professionally. The claim to *exclusive* audience was argued at great length in Carmarthenshire, before Mr. JOHNES, and will be found elaborately reported in 1 C. C. Chron. 191, and the result is thus stated in the head note to the report:

Upon an application made for exclusive audience for counsel in this Court in causes where the demand was above 5*l*., and in all insolvency and protection cases:

Held, that this Court has power to grant exclusive audience to whomsoever the Judge may please:

That probably this Court would deem it right to give such exclusive audience if a sufficient bar usually attended to afford the suitors a choice of advocates.

But in the present state of the Court, and in the absence of such a choice, this Court will not entertain the application.

In protection and insolvency cases, however, in which the practice has been already determined by the insolvent commissioners, this Court will grant exclusive audience whenever four barristers are present, but not otherwise.

Claim of counsel to pre-audience

And the claim to *pre-audience,* so far as regards the practice of the County Courts, was refused by the Judge of the Staffordshire Court (reported 1 C. C. Chron. 268), who said,

This is an application made to me at the last Court, on behalf of the members of the bar, for exclusive audience in the business of this Court relating to insolvents, and of pre-audience in the County Court business. It is an application to the discretion of the Court—not urged as a matter of right, but founded on public convenience, and on public policy. Of course, these are the only grounds on which an appeal to the discretion of any Court of Justice can be properly made; for such Court, in its practice, its rules, and its regulations, can only properly have regard to what will most conduce to the benefit and interests of the community, and the suitors for whom this Court is constituted. It is necessary, therefore, in the consideration of this application, to refer to the peculiar principles and purposes upon and for which this Court is

Claim of counsel to pre-audience

established,—namely, to afford the readiest and cheapest means of legal investigation for the recovery of debts, unfettered by the technicalities of pleading or of advocacy. And I do not hesitate to say that, in my judgment, the granting of this application, in the present business of the Court, would be a direct violation of the intention of the Act of Parliament, and of the constitution of this Court, as tending to increase expense, and to raise an impediment to the suitor's coming in his own way before the Court. The question as to insolvency cases has somewhat more of difficulty in it, inasmuch as it is urged that the bar were allowed by the Commissioners of Insolvency, when on circuit at Stafford, such exclusive audience. I own I feel some difficulty on this point, but, after great consideration, and not without great reluctance, I do not deem the nature or extent of such business as justifying such exclusive audience; for, considering that applications in insolvency relate to inquiries that require no great technicality of advocacy, and with regard to which the saving of expense is of great importance, I see no likelihood that the extent of that business is likely to secure the attendance of a bar; and considering that in cases of magnitude, where expense is justifiable, counsel may be employed, and looking at the whole bearing of the business as it is now connected with this Court, I feel myself obliged, in the present state of this Court, to refuse the application, and to make no distinction in insolvency cases. Were I, in this matter, to allow myself to consult my own inclination and wish, I should come to a different conclusion, if I thought that it would secure to me what I consider of such high importance, the assistance of an influential and powerful bar. I hold the importance of such a body to the due administration of justice, where it can be properly had, in the very first degree; and wherever the business of a Court will secure the attendance of such a body, every encouragement will readily be given to it. Its assistance by its arguments, its check upon arrogance and negligence, its exposure of ignorance or bias, its resistance to oppression, its countenance and support to independence and integrity, are what every Judge must deem of the highest value; and wherever and so long as high sense of honour, of independence, of integrity, and of learning are the characteristics of the bar, there will be no backwardness on the part of the community to appreciate the value of their services and to seek for their assistance. But I do not consider that I should be rightly consulting the interests either of the community or the bar, if I were to force unnaturally upon that community the employment of barristers in a Court constituted as these County Courts are, and in business such as at present is disposed of here. In cases in which their assistance is felt to be necessary, and the expense justifiable, they will no doubt be resorted to, but I consider I should be violating the principle of the Act under which I sit, and much embarrassing the utility of this Court, if I were in any degree to obstruct the facility with which all parties are enabled under it to approach the seat of justice in the simplest and least artificial way, and at the least possible expense.

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3. "*But no barrister, attorney, or other person, except by leave of the Judge, shall be entitled to be heard to argue any question as counsel for any other person in any proceeding in any Court holden under this Act.*"

But not to argue a case without leave of the Judge.

Although, therefore, the *appearance* of counsel or attorney for a party in any action is a matter of right, he may not *argue any question as counsel for any other person* without leave of the Judge. The term "*argue*" will, it is presumed, be strictly construed as meaning to address the Court on a question of law or fact, and will not extend to the examination and cross-examination of witnesses.

An attorney only entitled to fees for appearing.

4. "*And no person not being an attorney admitted to one of Her Majesty's Superior Courts of Record, shall be entitled to have or recover any sum of money for appearing or acting on behalf of any other person in the said Court.*"

This provision effectually protects the suitors against the impositions of debt-collectors and sham lawyers.

The fees payable to counsel and attorneys will come to be considered more properly in the chapter that will be devoted to the subject in the Book treating of *the Practice* of the Courts.

Webster v. *Hooper* (1 C. C. Chron. 104).

And appearance by attorney is *a right*. The party is not compelled to appear in person. It was properly so held by Mr. KOE, in Essex, in the case of *Webster* v. *Hooper* (1 C. C. Chron. 104).

Universities.

273. *Universities.*—The 140th section preserves the rights and privileges of the Chancellor, Masters, and Scholars of the Universities of Oxford and Cambridge respectively, as by law possessed, and the jurisdiction of the Courts of the Chancellor or Vice-Chancellors of the said universities.

Stannaries Courts.

274. *Stannaries Courts.*—And the 141st section does the like with the Courts of the Lord Warden, and of the Vice-Warden of the Stannaries of Cornwall. But it is expressly provided that "this provision shall not be deemed to prevent the establishment of any Court under this Act within the said Stannaries, or to limit or affect the jurisdiction of any Court so established under this Act."

We conclude this chapter with some miscellaneous questions that have arisen as to the jurisdiction of the Court in respect of parties.

Foreign ambassadors. *Muggeridge* v. *Prince Castelcicala* (1 C. C. Chron. 122).

275. *Foreign Ambassadors.*—In the case of *Muggeridge* v. *Prince Castelcicala* (1 C. C. Chron. 122), it was contended that the privilege which was given to ambassadors or foreign ministers and their domestics, by statute 7 Anne, c. 12, which makes void all writs and processes whereby they might be arrested or imprisoned, or their goods and chattels distrained, was not applicable to plaints in the County Courts. The learned Judge was of that opinion, and that the plaint might be entered, and a summons issue; but he stated that he had no power to give execution upon the judgment, if obtained, that being clearly a process whereby the defendant might have his goods and chattels distrained.

Soldiers on service. *Upjohn* v. *Auger* (1 C. C. Chron. 125).

276. *Soldiers on Service.*—At the Brompton County Court, in the case of *Upjohn* v. *Auger* (1 C. C. Chron. 125), it was held by Mr. Amos that a soldier in actual service might be committed under the 98th section for contempt in disobeying the order of the Court for the payment of a judgment by instalments.

Marines on service. *Stapleford* v. *Graves* (1 C. C. Chron. 171).

277. *Marines on Service.*—But in the case of *Stapleford* v. *Graves* (1 C. C. Chron. 171), it was held by Mr. Gale, in the Hampshire Court, that a private in the marines is *not* liable to be committed under section 98 for nonpayment of instalments ordered by a Judge of the County Court; the commitment by the Judge of a County Court for disobedience to any order is not "for some criminal matter" within the meaning of the Marine Mutiny Act, 10 Vict. c. 13, s. 55. Mr. Gale took time to consider his judgment, and it was in these words:

In this case the defendant had been summoned to show cause why he should not be committed upon an unsatisfied judgment of this Court. At the hearing, it appeared that he had means of paying the instalments ordered by the Court, and on that ground ought to be committed. As, however, the defendant is a private marine, I entertained a doubt whether the Marine Mutiny Act did not prevent this Court exercising

its general power of commitment. That statute (10 Vict. c. 13, s. 55), enacts that "no person enlisted as a marine shall be liable to be taken out of Her Majesty's service by any process or execution whatsoever, other than for some criminal matter," unless in cases of execution for debts above 30*l.* Inasmuch as this debt was under 30*l.*, the question is, whether a commitment under the County Courts Act ought to be considered as "for some criminal matter." The exemption from arrest obviously is given, not for the personal benefit of the defendant, but for the benefit of the State, that it may not be deprived of the services of its soldiery. The exception to the exemption has also the same object in view; it would be injurious to the State that its soldiers and marines should have an immunity from arrest for criminal matters properly so called. The County Court commitment savours in some degree of criminal process—a process for punishment, inasmuch as it issues only after some misconduct of the defendant, either in the contracting of the obligation, or in his subsequent conduct in neglecting to discharge it; but it appears to me that the commitment is much more in the nature of civil process, because, however gross might have been the misconduct of the defendant, if he had paid the debt, or should be ready to pay it on being summoned, the Court could not commit him. Looking at the clear object of the Legislature, that the State should not lose the services of its soldiery unless an object which it considers of equal importance is to be attained, viz. that they should be punished for crimes and misdemeanors, I think that process of commitment arising out of a civil obligation, and principally put in motion to enforce it, cannot be considered as "process for some criminal matter," within the meaning of the statute.

CAP. IV.

AS TO PROCEEDINGS.

278. *Judge to be sole Judge unless Jury summoned.* —It is enacted by sect. 69 that the Judge shall be "the sole Judge in all actions brought in the said Court, and shall determine all questions, as well of *fact* as of *law*, unless a jury shall be summoned," &c. This is the section: BOOK IV. THE JURISDICTION. — *Cap. 4. As to Proceedings.*

Sect. 69. And be it enacted, that the Judge of the County Court shall be the sole Judge in all actions brought in the said Court, and shall determine all questions as well of fact as of law, unless a jury shall be summoned as hereinafter mentioned; and no suitors shall in any case be summoned to hold or have any jurisdiction in any Court holden under this Act. *Section 69.* — Judge alone to determine all questions unless a jury be summoned.

But the discretion thus vested in the Judge is not altogether absolute. There are restrictions which may, perhaps, be thus described:

The limit of his *jurisdiction* is the limit of his *discretion*. Provided he be acting within his jurisdiction, that is to say, deciding a matter which he has a right to decide, his discretion is absolute, and a Superior Court will not review that decision, however erroneous in law or in fact. But the Superior Court will interfere so far as to see whether the Judge of the County Court has acted within his jurisdiction, and if he have trespassed beyond, it will grant a prohibition to restrain him from proceeding further. Discretion of the Judge.

Hence are the numerous cases that now occupy the attention of the Courts above, as coming up from the County Courts, and which have been sometimes mistaken for proceedings in the nature of *an appeal.* They are not such, nor is there provided an appeal from the decision of a County Court. The case is of this kind. A Judge of the County Court decides that he will hear a particular plaint. The defendant says, "You have no right to hear it; it is not within your jurisdiction." The Judge proceeds to hear and decide

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it, and the defendant goes to the Superior Courts and says, "In this matter (describing it) the Judge of County Court A. has proceeded to hear and determine; it is not within his jurisdiction, and I pray a prohibition to restrain him." Upon that the Superior Court will have it argued whether the matter in question was or was not within the jurisdiction of the County Court. If of opinion that it was within the jurisdiction, it will not go further and inquire whether the County Court Judge decided rightly in law or in fact, but it will refuse the application and the defendant is without remedy. But, if of opinion that the County Court Judge had trespassed beyond his authority, and that the matter was out of his jurisdiction, the prohibition prayed for will be ordered.

This is a familiar explanation, but we hope it will make clear to the reader the precise boundary line that separates the irresponsibility of the County Court on one side from the interference of the Superior Courts on the other. The only question that has arisen or can arise upon it is, whether the matter under consideration is or is not *within the jurisdiction*, and that involves the questions where and when the jurisdiction of the County Court begins.

Where jurisdiction commences.

In the preceding chapters on jurisdiction, as it respects locality, the subject-matter, and the parties to the action, it has been shown to what places, things, and persons that jurisdiction extends. We have now to consider at what point *in the proceedings* the jurisdiction *commences*.

Upon this there has been and still is much difference of opinion. On the one side it is contended, that jurisdiction arises immediately upon the existence of a fit subject-matter; on the other side, it is argued that it does not commence until that subject-matter has been brought within the jurisdiction of the Court by the service of the summons. The practical consequences of the result are very important.

Lewis v. *Hance* (1 Cox & Macrae, 75).

In *Lewis* v. *Hance* (1 Cox & Macrae, 75), the judgment of the Queen's Bench proceeded on the assumption that the jurisdiction did *not* begin until the party was brought within it by some process of the Court; that it was not enough for a plaintiff to have a cause of action for which he might sue in the County Court in order to bring him and his cause of action within the jurisdiction. "A debtor," said the Court of

Queen's Bench, "when sued in a County Court, is at once placed under its jurisdiction, to the abolition of any privilege which would otherwise exempt him from that control. But it is difficult to see how a creditor, who does not choose to sue in that Court, though he may do so, but who chooses to sue in a Superior Court, can be said to be within the jurisdiction of the County Court; that Court cannot in any way punish him, or call him to account for not suing in it, or exercise any sort of jurisdiction over him as to costs or otherwise, when he sues in any other Court. He requires no privilege to exempt him from the jurisdiction of any County Court, for he never was within its jurisdiction."

Where jurisdiction commences.

From this it is manifest that, in the opinion of the Court of Queen's Bench, jurisdiction does not attach until the party *has placed himself within it by process of the Court;* either by entering a plaint, if a plaintiff, or being summoned, if a defendant.

But, in the case of *Robinson* v. *Lenaghan* (1 Cox & Macrae, 97), the Court of Exchequer, and in that of *Zohrab* v. *Smith* (1 Cox & Macrae, 106), Mr. Justice Coleridge, sitting in the Bail Court, appears to have proceeded upon a somewhat different view of the time at which jurisdiction commences. In both cases the question at issue was, whether the summons had been duly served, the defendant in each asserting that the summons had not reached him. In both cases it was held that this was a matter *within* the jurisdiction of the County Court, and upon which the Judge was the sole Judge, vested with absolute discretion, which the Superior Court could not revise, and, therefore, the prohibition was refused.

Both of these last decisions proceeded upon the assumption, that the jurisdiction of the County Court begins with the existence of the *cause of action.* In *Robinson* v. *Lenaghan* (1 Cox & Macrae, 97), POLLOCK, C. B., said, "It is clear the County Court has jurisdiction over the matter, and the Judge, upon due proof of the service of the summons, may proceed to the hearing of the cause on the part of the plaintiff only. The term *due* must be that which is sufficient to satisfy the mind of the Judge, and if he is satisfied, that is enough;" and ROLFE, B., said, "After reading the 80th section, if the Judge of the Inferior Court is satisfied as to the due service of the summons, and

Robinson v. *Lenaghan* (1 Cox & Macrae 97).

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he has adopted such other means as that section directs, we cannot review his determination." And in *Zohrab* v. *Smith* (1 Cox & Macrae, 106), COLERIDGE, J. after putting the case on the assumption that due service of the summons was a condition precedent to the Court entering upon the case, said, "But when I argue as though it were necessary to originate jurisdiction that this proof should be given, I by no means wish it to be understood that such is my own opinion, for I should say that it is entirely the other way, and that if the *cause* is within the jurisdiction of the Court, this is merely a rule to direct the Judge in the exercise of that jurisdiction. It may be compared to a notice of trial. If no notice of trial had been given in an action in one of the Superior Courts, it would certainly be a ground for a new trial, but such notice would not be necessary to give jurisdiction to try."

Zohrab v. *Smith* (1 Cox & Macrae, 106).

Waters v. *Handly* (1 C.C. Chron. 279).

Again, in the case of *Waters* v. *Handly* (1 C. C. Chron. 279), where, among other questions, it was contended that, because the summons had not, in fact, been left at the defendant's house, but the Judge had accepted proof of service, and proceeded to hear and determine, he had acted without jurisdiction. But the Court was unanimously of opinion that it was exclusively for the Judge to determine whether the summons had been properly issued and served, and MAULE, J. queried if the issuing of the summons was not the commencement of the action. But it appears sufficiently certain that the entry of the plaint, and not the issuing of the summons, is the proper commencement of the suit.

In this conflict of opinion between such high authorities, we cannot venture more than to express our inclination towards the larger meaning of jurisdiction adopted by the Court of Exchequer and Mr. Justice Coleridge. Stripped of the perplexities of learned definitions, *jurisdiction* is simply another word for *authority*. The jurisdiction of a Court is *the tether* of its *authority*. A cause of action is not the less within the range of that authority, because it may not be necessary to appeal to the authority for its enforcement.

But, perhaps the cases may be reconciled by assuming the meaning of the Queen's Bench to have been that the entry of the *plaint* was the com-

mencement of the jurisdiction; the cases in the Exchequer and Bail Court would be consistent with such an interpretation.

279. *Judge may direct an Arbitration.*—The 77th section empowers the Judge, with the consent of both parties to the suit, to order that it be referred to arbitration. This is the language of the statute:

Section 77. Suits may be settled by arbitration.

Sect. 77. And be it enacted, that the Judge may in any case, with the consent of both parties to the suit, order the same, with or without other matters within the jurisdiction of the Court in dispute between such parties, to be referred to arbitration, to such person or persons, and in such manner, and on such terms as he shall think reasonable and just; and such reference shall not be revocable by either party, except by consent of the Judge; and the award of the arbitrator or arbitrators or umpire shall be entered as the judgment in the cause, and shall be as binding and effectual to all intents as if given by the Judge; provided that the Judge may, if he think fit, on application to him at the first Court held after the expiration of one week after the entry of such award, set aside any such award so given as aforesaid, or may, with the consent of both parties aforesaid, revoke the reference, or order another reference to be made in the manner aforesaid.

The proceedings in arbitration, with the forms, &c., will be given in a chapter devoted to the subject in the book upon *the Practice* of the Courts.

Forms of procedure.

280. *Forms of Procedure.*—The forms of procedure in the County Courts are, by the 78th section, directed to be framed by five of the Judges of the Superior Courts, who are empowered to make and issue all the general rules for regulating the practice and proceedings of the County Courts, and to frame forms for every proceeding in the said Courts, and the rules and forms so made are to be observed and used in all the Courts. And in any case not provided for by the statute or the rules, "the general principles of practice in the Superior Courts of Common Law may be adopted and applied, at the discretion of the Judges, to actions and proceedings in their several Courts." This is the section:—

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Cap. 4. *As to Proceedings.*
Section 78.
Forms of procedure in Courts to be framed by the Judges.

Sect. 78. And be it enacted, that five of the Judges of the Superior Courts of Common Law at Westminster, including the Lord Chief Justice of the Court of Queen's Bench, the Lord Chief Justice of the Court of Common Pleas, and the Lord Chief Baron of the Court of Exchequer, or one of the said Chiefs at the least, shall have power to make and issue all the general rules for regulating the practice and proceedings of the County Courts holden under this Act, and also to frame forms for every proceeding in the said Courts for which they shall think it necessary that a form be provided, and also for keeping all books, entries, and accounts to be kept by the Clerks of the said Courts, and from time to time to alter any such rule or form; and the rules so made, and the forms so framed, shall be observed and used in all the Courts holden under this Act; and in any case not expressly provided for herein, or by the said rules, the general principles of practice in the Superior Courts of Common Law may be adopted and applied, at the discretion of the Judges, to actions and proceedings in their several Courts.

This section will be extensively applied when we come to consider the Practice of the Courts. At present it suggests nothing that needs explanation in this place.

281. *Parties may be examined on Oath.*—The 83rd section permits the parties to any action or other proceeding under the Act, to be examined, either on behalf of the plaintiff or defendant, upon oath. As thus:

Section 83
Parties and others may be examined.

Sect. 83. And be it enacted, that on the hearing or trial of any action or on any other proceeding under this Act the parties thereto, their wives and all other persons, may be examined, either on behalf of the plaintiff or defendant, upon oath, or solemn affirmation in those cases in which persons are by law allowed to make affirmation instead of taking an oath, to be administered by the proper officer of the Court.

Upon this a question of considerable importance has been raised, namely, whether one party to an action may require the examination of the other without formally subpœnaing him as a witness, or if the Act

be not *permissive* only, enabling either party to give evidence, but not compelling him to do so, except by the usual form of production as a witness, or if the Court should choose to examine him. The words of the statute are "may be examined." It is contended that this means only that the parties may produce as witnesses themselves, their wives, or any other persons, contrary to the rule of the Superior Courts, which excludes the parties and their wives from the witness-box; that it does *not* mean that one party shall have power to call upon the other, if present, to prove the case against himself; that he should first make him his own witness by a subpœna, and then upon that subpœna require his evidence. And so it has been held by the Judges of the County Courts, and for this obvious reason, that the party is not bound to attend in person. The statute expressly permits his appearance by attorney, and if "*may*," in the section under consideration, is to be read as "*shall*," one of the two provisions would be impracticable; for, if the party is not compelled to be present, how can he be compelled to be examined? Or, if his examination be compulsory, what becomes of his privilege to appear by attorney? The course to be pursued, when one party desires the evidence of the other, is to summon him to attend *as a witness*, and such a summons he would be bound to obey, and for all purposes would be in the position of any other witness.

Examination of parties to the action.

282. *Perjury.*—By the next section (the 84th) persons giving false evidence on oath are to be guilty of perjury.

Section 84.

Persons giving false evidence guilty of perjury.

Sect. 84. And be it enacted, that every person who in any examination upon oath or solemn affirmation before any Judge of the County Court shall wilfully and corruptly give false evidence shall be deemed guilty of perjury.

283. *Summonses to Witnesses.*—The 85th section empowers the Court to issue summonses to witnesses on the application of either party to a suit.

Section 85.

Summonses to witnesses.

Sect. 85. And be it enacted, that either of the parties to the suit or any other proceeding under this Act may obtain, at the office of the Clerk of the Court, summonses to witnesses, to be

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served by one of the Bailiffs of the Court, with or without a clause requiring the production of books, deeds, papers, and writings in their possession or control, and in any such summons any number of names may be inserted.

The practice in this case also will be minutely described in the *Practice* of the Courts.

284. *Penalty on Witnesses.*—The next section (the 86th) gives to the Courts the necessary powers by inflicting penalties to enforce attendance of witnesses, and compel them to give evidence.

Section 86. Penalty on witnesses neglecting summons.

Sect. 86. And be it enacted, that every person on whom any such summons shall have been served, either personally or in such other manner as shall be directed by the general rules or practice of the Courts, and to whom at the same time payment or a tender of payment of his expenses shall have been made on such scale of allowance as shall be from time to time settled by the general rules of practice of the Court, and who shall refuse or neglect, without sufficient cause, to appear, or to produce any books, papers, or writings required by such summons to be produced, and also every person present in Court who shall be required to give evidence, and who shall refuse to be sworn and give evidence, shall forfeit and pay such fine, not exceeding ten pounds, as the Judge shall set on him; and the whole or any part of such fine, in the discretion of the Judge, after deducting the costs, shall be applicable toward indemnifying the party injured by such refusal or neglect, and the remainder thereof shall form part of the general fund of the Court in which the fine was imposed.

And the manner of enforcing the fine is enacted by section 87.

Section 87. Fines how to be enforced and accounted for.

Sect. 87. And be it enacted, that payment of any fine imposed by any Court under the authority of this Act may be enforced upon the order of the Judge in like manner as payment of any debt adjudged in the said Court, and shall be accounted for as herein provided.

285. *Judgments to be final.*—The 89th section provides that judgments shall be final and conclusive

between the parties, but gives to the Court power to nonsuit the plaintiff, or to order a new trial upon terms.

Section 89. Judgments how far final.

Sect. 89. And be it enacted, that every order and judgment of any Court holden under this Act, except as herein provided, shall be final and conclusive between the parties, but the Judge shall have power to nonsuit the plaintiff in every case in which satisfactory proof shall not be given to him entitling either the plaintiff or defendant to the judgment of the Court, and shall also in every case whatever have the power, if he shall think fit, to order a new trial to be had upon such terms as he shall think reasonable, and in the meantime to stay the proceedings.

The practice in nonsuit and new trial, with the various cases decided upon it, belongs to that portion of this treatise which will be devoted to the *Practice* of the Courts.

286. *Removal of Actions to the Superior Courts.*— In certain cases only can a plaint entered in the County Court be removed from that Court into one of the Superior Courts, namely, where the debt or damage claimed exceeds 5*l.*, and then only by leave of a Judge of one of the said Superior Courts, in cases which shall appear to the Judge fit to be tried in one of the Superior Courts, and upon such terms as he shall think fit to impose. This is the section :

Section 90. No actions to be removed into Superior Courts but on certain conditions.

Sect. 90. And be it enacted, that no plaint entered in any Court holden under this Act shall be removed or removable from the said Court into any of Her Majesty's Superior Courts of Record by any writ or process, unless the debt or damage claimed shall exceed five pounds, and then only by leave of a Judge of one of the said Superior Courts, in cases which shall appear to the Judge fit to be tried in one of the Superior Courts, and upon such terms as to payment of costs, giving security for debt or costs, or such other terms as he shall think fit.

So entirely is this in the discretion of the Judge to whom the application for removal is made, that it is impossible to lay down any rules by which to guide the practitioner in determining in what cases he

would be likely to obtain such a permission. But the Judge would require to be satisfied that the case involved questions of law or peculiar difficulties of proof which would require for their solution the assistance of counsel, and the greater learning or more extensive authority of the Superior Courts. As there is no appeal from the decision of a County Court acting within its jurisdiction, whatever might be its errors in law or fact, it is presumed that the Judges of the Superior Courts will be liberal of permission to remove from the County Court cases which, however individually trifling, involve important questions of law or fact, or upon which many other like cases depend; for only thus can they secure to the party, not merely due consideration of the case at the trial, but the right of appeal to a still higher tribunal. But, at the same time, to guard against the oppressive use of this privilege, the permission should be upon terms that will *secure* to the other party his costs, should the applicant fail to establish his case.

287. *Payment by Instalments.*—The 92nd section empowers the Judge to order "payment of any debt, or damages, or costs, for which judgment shall be obtained in the said Court," to be made by instalments, or otherwise.

Section 92. — Court may make orders for payment by instalments.

Sect. 92. And be it enacted, that the Judge may make orders concerning the time or times and by what instalments any debt or damages or costs for which judgment shall be obtained in the said Court shall be paid, and all such moneys shall be paid into Court, unless the Judge shall otherwise direct.

288. *Execution.*—And the 94th section gives to the Court power to issue a warrant of execution against the goods and chattels of the party against whom such an order shall be made, in case of default or failure of payment thereof as ordered, to be levied by the High Bailiff, by distress and sale; and it is expressly enacted, that "all constables and other peace officers within their several jurisdictions shall aid in the execution of every such warrant."

Section 94. — Court may

Sect. 94. And be it enacted, that whenever the Judge shall have made an order for the payment of money, the amount shall

be recoverable, in case of default or failure of payment thereof forthwith, or at the time or times and in the manner thereby directed, by execution against the goods and chattels of the party against whom such order shall be made; and the Clerk of the said Court, at the request of the party prosecuting such order, shall issue under the seal of the Court a writ of *fieri facias* as a warrant of execution to the High Bailiff of the Court, who by such warrant shall be empowered to levy, or cause to be levied, by distress and sale of the goods and chattels of such party such sum of money as shall be so ordered, wheresoever they may be found within the district of the Court, whether within the liberties or without, and also the costs of the execution; and all constables and other peace officers within their several jurisdictions shall aid in the execution of every such warrant.

award execution against goods.

And by the 95th section, where an order for payment by instalments has been made, execution is not to issue "until after default in payment of some instalment according to such order, and execution or successive executions may then issue for the whole of the said sum of money and costs then remaining unpaid, or for such portion thereof as the Judge shall order, either at the time of making the original order, or at any subsequent time:" (sect. 95.)

289. *Proceedings on unsatisfied Judgments.*—The 98th section gives to the County Court jurisdiction over an unsatisfied judgment or order of any Court held by virtue of this Act, by process of a summons to the defendant issuing from the Court *within the limits of which the defendant shall then dwell or carry on his business*, requiring him to appear to answer such things "*as are named in such summons.*" And on his appearance he may be examined upon oath:

Proceedings on unsatisfied judgments.

1. Touching his estate and effects.
2. The manner and circumstances under which he contracted the debt, or incurred the damages or liability, which is the subject of the action in which judgment has been obtained against him.
3. As to the means and expectations he *then* (*i. e.* at the time of contracting the debt, &c.) had of discharging the same.

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4. As to the property and means he *still hath* of discharging the same.
5. As to the disposal he may have made of any property.

And "the person obtaining such summons and all other witnesses *whom the Judge shall think requisite* may be examined upon oath touching the inquiries authorized to be made as aforesaid; and the costs of such summons, and of all proceedings thereon, shall be deemed costs in the cause:" (sect. 98.)

Power of Court to commit for fraud, &c.

290. *Jurisdiction of the Court to commit for Fraud, &c.*—The 99th section empowers the Judge, upon such summons and hearing as aforesaid, "if he shall think fit, to order that any such party may be committed to the common gaol or house of correction of the county, district, or place in which the party summoned is resident, or to any prison which shall be provided as the prison of the Court, for any period *not exceeding forty days*," for the offences following:

1. If the party summoned do not attend as required by such summons, and shall not allege a sufficient excuse for not attending.
2. If he refuse to be sworn.
3. If he refuse to disclose any of the things aforesaid (*i. e.* the matters upon which, by section 98, and set forth above, he may be examined).
4. If he shall not make answer touching the same to the satisfaction of the Judge.
5. If it shall appear to the Judge, either by the examination of the party, or by any other evidence, that such party, if a defendant, in incurring the debt or liability which is the subject of the action in which judgment has been obtained, has *obtained credit* from the plaintiff, *under false pretences*, or by means of *fraud*, or *breach of trust*.
6. Or has wilfully contracted such debt or liability without having had at the same time a reasonable expectation of being able to pay or discharge the same.
7. Or shall have made or caused to be made any gift, delivery, or transfer of any property, or shall have charged, removed, or concealed the same, with intent to defraud his creditors, or any of them.

8. Or if it shall appear to the satisfaction of the Judge that the party so summoned has then (*i. e.* at the time of the hearing), or *has had since* the judgment obtained against him, sufficient means and ability to pay the debt or damages, or costs so recovered against him, either altogether or by any instalment or instalments which the Court in which the judgment was obtained shall have ordered.

Power of Court to commit for fraud, &c.

9. If he *shall* refuse or neglect to pay the same as shall have been so ordered (*i. e.* by the Court where the judgment was obtained.)

10. If he *shall* refuse or neglect to pay the same as *shall be ordered* by this Court: (sect. 99.)

This and the preceding section are transferred almost verbatim from the Small Debts Act (8 & 9 Vict. c. 127), where it was made the subject of a very important decision as to the limit of the jurisdiction of the Judge of the Inferior Court to commit for disobedience to an order by the nonpayment of instalments. It was brought before both the Court of Queen's Bench and the Court of Common Pleas, in the form of a *habeas corpus*, but the prisoner was remanded by the former Court, the Judges being divided in opinion, but by the latter Court he was unanimously ordered to be discharged. The case alluded to is that of *Re Thomas Kinning* (1 Cox & Macrae, 1), the facts of which were that the prisoner having been ordered by the Judge of the Sheriffs' Court in London, upon a summons there, to pay a debt by instalments of 2*l.* per month, and in default to be committed to prison; and having made default was committed accordingly, without any further summons or hearing by the said Court, it was held, after solemn argument by the whole Court of Common Pleas, and a minority of the Court of Queen's Bench, that the Judge had no power to commit for disobedience to the order without again summoning the defendant to show cause why he did not obey the order, requiring, in fact, a fresh summons, hearing, and order of committal on the nonpayment of each instalment. The other points that arose in this case will be set forth when *the Practice* of the County Courts, in respect of this branch of their jurisdiction, comes to be considered in the next volume. We are here dealing only with the limit of the jurisdiction itself.

Re T. Kinning (1 Cox & Macrae, 1).

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It is provided by the 103rd section, that no imprisonment under this Act shall in anywise operate as a satisfaction or extinguishment of the debt or other cause of action on which a judgment has been obtained, &c. This is the language of the statute:

Section 103. — Imprisonment not to operate as a satisfaction for the debt, &c.

Sect. 103. And be it enacted, that no imprisonment under this Act shall in anywise operate as a satisfaction or extinguishment of the debt or other cause of action on which a judgment has been obtained, or protect the defendant from being anew summoned and imprisoned for any new fraud or other default rendering him liable to be imprisoned under this Act, or deprive the plaintiff of any right to take out execution against the goods and chattels of the defendant, in the same manner as if such imprisonment had not taken place.

The condition, however, of a second or after *imprisonment* upon the same judgment is limited to,

1. A *new* fraud.
2. Any other default rendering the defendant liable to be imprisoned under this Act.

Hence, after an imprisonment upon a second or subsequent summons, under the 98th section, it will not suffice to show the same grounds for it as on the first summons. The applicant must prove a *new* fraud, or some *other* default. Being in derogation of liberty, the language will be construed with the utmost strictness, and, whatever might have been the intention, the interpretation put upon the term "*new*" will doubtless be "a fraud committed *subsequently* to the former hearing." The meaning of the term "*other default*," however, could scarcely be restricted further than to intend some default other than that for which the previous imprisonment was ordered. The term "default" can be applicable only to neglect or omission to obey some order for payment, the other grounds of imprisonment being for acts of commission and not of omission, and, therefore, it will be necessary to show some other default of payment besides that for which the previous order of commitment was made, and which order and the warrant thereupon, must, according to the case of *Re Kinning* (1 Cox & Macrae, 1), show upon their faces the specific act or default for which such order was granted.

It is necessary to bear in mind, then, in the exercise of this branch of the jurisdiction of the County Courts, that the power of imprisonment is permitted not for *the debt*, but for some *fraud* of the debtor in contracting it, or evading payment of it, or that it is in the nature of a *contempt* for wilful disobedience to the order of the Court. It is not in any shape a revival of imprisonment for *debt*, but simply a *punishment* for fraud or wilful contempt of the Court.

Power of imprisonment under sections 98, 99.

The Judges will, it is hoped, consider this in their administration of the important and very useful power thus confided to them, and order imprisonment only when satisfied that the nonpayment was the result of a wilful disobedience to the order of the Court, or of a desire to evade payment of the debt or demand, and not of actual *inability* to pay. Much minute and tedious inquiry will often be necessary to ascertain this; but when the benefit to society of the example of severe punishment of fraudulent debtors on the one side, and the danger, on the other side, of oppressing the merely unfortunate are considered, we are sure that the Judges of the County Courts will deem no time nor pains wasted that are devoted to *all cases* of this class.

Every case of fraud in the contracting of the debt without reasonable prospect of being able to pay it, or in evading payment after it was contracted, should be invariably visited with the utmost penalty awarded by the statute.

A few questions on the construction of the provisions of sections 98 and 99 have arisen in the County Courts, which we briefly notice here, reserving a more particular review of them for the next volume.

Knight v. *Goode* (1 C. C. Chron. 152).

In the case of *Knight* v. *Goode* (1 C. C. Chron. 152), it was held by Mr. HILDYARD, that on a summons for nonpayment of instalments, the Judge will consider the *present* and not the *past* ability of the defendant to pay. Where the plaintiff had seduced the defendant's daughter, and refused to pay anything towards the maintenance of her child, she being resident with the defendant, Mr. WALKER refused to make an order of commitment: (*Bowskill* v. *Falkingham*, 1 C. C. Chron. 154).

Bowskill v. *Falkingham* (1 C.C. Chron. 154).

Gasson v. *Malcolm* (1 C.C. Chron. 213).

In the case of *Gasson* v. *Malcolm* (1 C. C. Chron. 213), it was held that the Judge has power to alter or rescind an order made under this section.

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In the case of *Carpenter* v. *Abberley* (1 C. C. Chron. 214), Mr. TEMPLE thus stated the principles which he conceived ought to govern the Court in the application of the power of imprisonment for fraud or disobedience to orders under the 98th section:

Carpenter v. *Abberley* (1 C.C.Chron. 214).

"His HONOR observed, that the process of bringing parties before the Court to ascertain why they did not pay their instalments was a very serious one, and seemed to be somewhat misunderstood. He had no desire to discourage parties from taking this course, but he felt it was one which ought not to be adopted upon slight considerations, inasmuch as it affected the liberty of the defendant. In cases where the evidence was clear that the party owing the debt had the means of discharging it if he thought fit, the Court would put its power of committal into effect; but he could not exercise that power upon the mere idle rumour of third parties, who probably, in too many instances, had a word to say against everybody, and statements of so vague a character ought not to be advanced in a Court of justice without evidence to support them. He perceived throughout the whole of the circuit that this part of the process of the Court was utterly misunderstood. If suitors thought he would act upon the power given him by the Legislature because he felt indignant that the order of the Court had not been fulfilled, he took the opportunity of disclaiming that he would be at all actuated by such a feeling. He sat there fairly and dispassionately to carry on the business of the Court, and if it were shown that parties wilfully disobeyed the order, having the means to discharge the debt, they must take the consequence of such a course; but this process was a very serious one, and ought not to be lightly taken in any case, without the creditor had the means of substantiating his summons. In this instance the defendant would seem to have earned, by the assistance even of his son and wife, barely sufficient to keep body and soul together, and therefore he could not consider that his case came within the meaning at all of this clause of the Act of Parliament. The summons must consequently be dismissed."

291. *Power to rescind or alter Order.*—The 100th section gives power to "the Judge of any Court before whom such summons shall be heard, if he shall

think fit, whether or not he shall make any order for the committal of the defendant, to *rescind* or *alter* any *order* that shall have been previously made against any defendant so summoned before him for the payment, by instalments or otherwise, of any debt or damages recovered, and to make any further or other order, either for the payment of the whole of such debt or damages and costs forthwith, or by any instalments, or in any other manner as such Judge may think reasonable and just:" (sect. 100.) In the case of *Jones* v. *Jones* (1 Cox & Macrae, 92), it was held that this power to rescind his decision must be exercised by the Judge during the sitting of the Court, on the same day, and if made subsequently, a prohibition would be granted.

Power to rescind or alter order.

292. *Power to examine and commit at the Hearing.*—Besides the above power to commit, given to the Judge by section 98, in case of unsatisfied judgments, a further power is vested in him, by section 101, to exercise, at the hearing of the cause, precisely the same power and authority to examine the parties and others touching the matters above set forth, and of committing *the defendant* to prison, and of making an order, as he might under the preceding provisions in the case of an unsatisfied judgment. Hence, all the comments that have been made upon sections 98 and 99 will be equally applicable to this. The following is the section *verbatim*:

Section 101. Power to examine and commit at hearing of the cause.

Sect. 101. And be it enacted, that in every case where the defendant in any suit brought in any County Court shall have been personally served with the summons to appear or shall personally appear at the trial of the same, the Judge at the hearing of the cause, or at any adjournment thereof if judgment shall be given against the defendant, shall have the same power and authority of examining the defendant and the plaintiff and other parties touching the several things herein-before mentioned, and of committing the defendant to prison, and of making an order, as he might have and exercise under the provisions hereinbefore contained in case the plaintiff had obtained a summons for that purpose after the judgment obtained as hereinbefore mentioned.

Lake v. *Shipp* (1 C.C.Chron. 85).

Upon this section one case only is reported, viz. that of *Lake* v. *Shipp* (1 C. C. Chron. 85). This was an application for an order to commit the defendant.

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He had been served with the summons and notice of the application. The facts proved were that plaintiff and defendant had agreed to buy cattle together; plaintiff was to find the money, the defendant was to do the work, and the profits were to be divided. On 11th of May, defendant obtained from plaintiff 54*l.* on pretence that he had purchased cattle to that amount, which he should sell the next day, and return the money, with the profit. Defendant lost the money at cards. Plaintiff in his particulars abandoned the excess above 20*l.* It was contended that on these facts defendant might be committed under the provisions of the 99th section, which were extended to the 101st section. It was a direct breach of trust. The Judge (Mr. AMOS), considered it necessary to prove strictly that the *credit was obtained* from the plaintiff under false pretences, or by means of fraud or breach of trust. It was not sufficient to show a breach of trust *after* the credit had been obtained. That was not included in the definition of offences punishable under this section.

Lake v. Shipp (1 C.C.Chron. 85).

"*Becke* would then solely rely on the breach of trust. It was unreasonable to suppose that the words 'obtaining credit' applied to the breach of trust; for in every case where there was a breach of trust, credit must have been obtained previously, for the trust must have been created prior to the breach being committed.

"His HONOR said that it was clear the section was very ill drawn; and probably it might have been intended to have borne a different signification, but he was bound by the plain grammatical construction of the words; and it was clear that the words 'by means of fraud or breach of trust' must be read in connexion with the words 'has obtained credit.' Unless, therefore, plaintiff could show that at the time defendant obtained the money he made use of false pretences, or that he obtained it by fraud or breach of trust, no subsequent misappropriation or breach of trust could bring him within the meaning of the section. As he looked on this in a certain degree as a criminal proceeding he felt bound by the strict words, and also to require strict legal proof."

Execution of warrants of commitment.

293. *Execution of Warrants of Commitment.*—The 102nd section enacts, that when an order of commitment is made the Clerk shall issue under the seal of

the Court a warrant of commitment *directed to one of the Bailiffs of any County Court*, who by such warrant shall be empowered to take the body of the person against whom such orders shall be made, and all constables or peace officers within their jurisdictions are to aid in its execution. It is remarkable that the Court should be empowered to direct a warrant of commitment to any Bailiff of *any* Court, for, as it will be seen presently, under section 104, which enacts the manner of issuing execution out of the district, the warrant issues to the Bailiff of the Court granting it, and if the defendant's goods be out of the jurisdiction, he forwards it to the Clerk of the Court within whose district it is to be executed, and the Bailiff of that Court receives and executes it under the seal and authority of his own Court. But nevertheless, under this section it would seem that, in the case of a warrant of commitment, every Court has authority to issue its warrant directly to the Bailiffs of all other Courts, who, for that purpose, are the servants, not of their own Courts only, but of all the Courts in the kingdom.

294. *Protection or Certificate in Bankruptcy not to discharge a Defendant so committed.*—It is expressly enacted, by section 102, that "no protection, order, or certificate granted by any Court of Bankruptcy or for the relief of insolvent debtors shall be available to discharge any defendant from any commitment under such last-mentioned order." Protection or order in bankruptcy or insolvency.

295. *Execution out of the Jurisdiction.*—The 104th section provides for the execution of warrants of execution against the goods and chattels, and of commitment, where the party against whom it was issued, or his goods and chattels, shall be out of the jurisdiction of the Court. The form of doing this will be more properly considered in that portion of the treatise which relates to the *Practice* of the Courts; therefore we do not further describe it here. Execution out of the jurisdiction.

296. *Power to suspend Execution.*—The 105th section empowers the Judge to suspend execution in certain cases.

Section 105.

Sect. 105. And be it enacted, that if it shall at any time appear to the satisfaction of the Judge, by the oath or affirma- Power to Judge to

suspend execution in certain cases.

tion of any person, or otherwise, that any defendant is unable, from sickness or other sufficient cause, to pay and discharge the debt or damages recovered against him, or any instalment thereof ordered to be paid as aforesaid, it shall be lawful for the Judge, in his discretion, to suspend or stay any judgment, order, or execution given, made, or issued in such action, for such time and on such terms as the Judge shall think fit, and so from time to time until it shall appear by the like proof as aforesaid that such temporary cause of disability has ceased.

For this purpose application must be made to the Judge of the Court from which the warrant of execution issued, and not to the Judge of the Court by whose officer it was executed.

Writ of error not to stay execution.

297. *Execution not to be stayed by Writ of Error.*—It is enacted, by section 108, that "no judgment or execution shall be stayed, delayed, or reversed upon or by any writ of error, or *supersedeas* thereon, to be sued for the reversing of any judgment given in any Court holden under the provisions of this Act."

Interpleader.

298. *Interpleader.*—And, by section 118, if any claim be made "to or in respect of any goods or chattels taken in execution under the process of any Court holden under this Act, or in respect of the proceeds or value thereof, by any landlord for rent, or by any person not being the party against whom such process has issued," the Court may bring before it such claimant and the party issuing the execution, and adjudicate upon the claim, and make such order thereon as to the Judge shall seem fit.

Sequestration.

Brunskill v. *Penleaze* (1 C.C. Chron 169).

299. *Sequestration.*—It appears that there is no power to remove a judgment from the County Court to the Superior Court, for the purpose of bringing it within the benefits of a sequestration. In the case of *Brunskill* v. *Penleaze* (1 C. C. Chron. 169), it was so rightly held by Baron Rolfe in chambers. But this is a *casus omissus* in the Act, which should be supplied at the first opportunity, for as the law now is, debts under 20*l.* are practically excluded from sharing the proceeds of a sequestration, however valuable the living may be, and consequently are irrecoverable against a clergyman having nothing but a sequestrated benefice.

CAP. V.

AS TO THE OFFICERS.

The statute gives to the Court in certain cases a special jurisdiction over its officers.

Penalty for misconduct or extortion.

300. *Penalty for Misconduct.*—By section 116, the Judge is empowered to inquire in a summary way into any act of *extortion* or *misconduct* charged upon any Clerk, Bailiff, or officer of the Court "acting under colour or pretence of the process of the said Court," or with *not duly paying or accounting* for any *money* levied by him under the authority of the statute, and thereupon to make such order for repayment of any money extorted, or due payment of any money so levied, and for the payment of such damages and costs as he shall think fit; and also to impose a fine upon the offender, not exceeding 10*l.*, for each offence, as he shall deem adequate. The section is as follows:

Section 116.

Remedies against, and penalties on, Bailiffs and other officers for misconduct.

Sect. 116. And be it enacted, that if any Clerk, Bailiff, or officer of the Court, acting under colour or pretence of the process of the said Court, shall be charged with extortion or misconduct, or with not duly paying or accounting for any money levied by him under the authority of this Act, it shall be lawful for the Judge to inquire into such matter in a summary way, and for that purpose to summon and enforce the attendance of all necessary parties in like manner as the attendance of witnesses in any case may be enforced, and to make such order thereupon for the repayment of any money extorted, or for the due payment of any money so levied as aforesaid, and for the payment of such damages and costs, as he shall think just; and also, if he shall think fit, to impose such fine upon the Clerk, Bailiff, or officer, not exceeding ten pounds for each offence, as he shall deem adequate; and in default of payment of any money so ordered to be paid payment of the same may be enforced by such ways and means as are herein provided for enforcing a judgment recovered in the said Court.

BOOK IV. THE JURISDICTION. — Cap. 5. As to the Officers.

301. *Penalty for taking any Fee or Reward other than as allowed.*—And the 117th section subjects every Treasurer, Clerk, Bailiff, or other officer to loss of office and incapacity from ever being employed in any office or emolument under this Act, and also to liability for damages.

Section 117. — Penalty on officers taking fees besides those allowed.

Sect. 117. And be it enacted, that every Treasurer, Clerk, Bailiff, or other officer employed in putting this Act or any of the powers thereof in execution, who shall wilfully and corruptly exact, take, or accept any fee or reward whatsoever, other than and except such fees as are or shall be appointed and allowed respectively as aforesaid, for or on account of anything done or to be done by virtue of this Act, or on any account whatsoever relative to putting this Act into execution, shall, upon proof thereof before the said Court, and in the case of a Clerk, Treasurer, or High Bailiff on allowance of the finding of the Court by the Lord Chancellor, be for ever incapable of serving or being employed under this Act in any office of profit or emolument, and shall also be liable for damages as herein provided.

Oats v. *Weekes* (1C.C.Chron. 82).

Very few proceedings have been reported as having been taken under these sections. The case of *Oats* v. *Weekes* (1 C. C. Chron. 82), was the first reported charge against a Bailiff under the 116th section, and it was dismissed after a full hearing.

Barrett v. *Curtis* (1C.C.Chron. 122).

The case of *Barrett* v. *Curtis* (1 C. C. Chron. 122), was an application under the 116th section against the defendant, the auctioneer and broker to the Court, for misconduct in the sale of certain goods taken in execution. It was held that he was an officer of the Court, and subject to its jurisdiction under this section.

Williams v. *Langley* (1C.C.Chron. 122).

In the case of *Williams* v. *Langley* (1 C. C. Chron. 122), where a summons had issued into a foreign district, and the Bailiff of the district into which it had issued had neglected his duty, and omitted to serve or return it, whereby the plaintiff was damnified; upon a complaint made, under the 116th sect., to the Court whence the summons had issued, it was held that it had no jurisdiction, under that section, over the officers of any other Court.

Actions by and against officers.

302. *Actions by and against Officers.*—Section 128 gives concurrent jurisdiction to the Superior Courts,

in all actions and proceedings "where any officer of the County Court shall be a party, except in respect of any claim to any goods and chattels taken in execution of the process of the Court, or the proceeds or value thereof," "at the election of the party suing or proceeding, as if this Act had not been passed."

This provision applies to actions in which an officer of *the* County Court is a party. It has been already explained why it is probable that the term *the* County Court is applicable, not to the district Court alone, but to all the district Courts in the same county. If this be a correct view, the concurrent jurisdiction of the Superior Court is preserved, not only where the officers of the district are concerned, but in the case of any officer of any district Court in the county.

But the option is given to the plaintiff, and not to the defendant, to avail himself of the concurrent jurisdiction so preserved.

Again, it is to be observed, that the jurisdiction of the Superior Court is only given concurrently, "as if this Act had not been passed." Therefore, in any case in which the action *must* formerly have been brought in an Inferior Court, as where the debt does not exceed 40*s*., it *must* still be brought in the County Court, even though an officer be a party. And so, we presume, it will be in the case of the Courts in schedules (A.) and (B.) many of which had jurisdiction to higher amounts than 40*s*., and over more extensive causes of action. Inasmuch as "if the Act had not been passed" the action could not have been brought in the Superior Court, it must still be brought in the County Court, which has been substituted for such Inferior Court. But whether it might not be contended that such actions (above 40*s*., for the Superior Courts would not entertain an action for a less amount) *might* have been brought in the Superior Court formerly, if the plaintiff chose to sacrifice his costs, and that so the jurisdiction is practically preserved to them under this section *in all cases* in which an officer is a party, is a question which must be solved when it arises. We merely suggest the query.

For further observations on actions by and against officers, see *ante*, p. 204.

Jurisdiction of Judge.

303. *Jurisdiction of the Judge.*—A Judge of the County Court has absolute and uncontrolled jurisdic-

BOOK IV. THE JURISDICTION. Cap. 5. As to the Officers.

tion over all questions of law, and also over every question of fact, in cases where a jury is not demanded. From his judgment there is no appeal, provided the subject-matter upon which he decides is within his jurisdiction, for if he should proceed to determine a matter not within his jurisdiction, the Superior Courts will review that decision, and issue a prohibition against his further proceeding, and if he should refuse to perform a duty within his jurisdiction, the Court of Queen's Bench will, in like manner, issue a *mandamus* to compel him.

The foundation of his authority thus to decide is the 69th section, as follows:

Section 69.

Judge alone to determine all questions unless a jury be summoned.

Sect. 69. And be it enacted, that the Judge of the County Court shall be the sole Judge in all actions brought in the said Court, and shall determine all questions as well of fact as of law, unless a jury shall be summoned as hereinafter mentioned; and no suitors shall in any case be summoned to hold or have any jurisdiction in any Court holden under this Act.

And the Court of Common Pleas has so held in the case of *Toft* v. *Rainer* (1 Cox & Macrae, 39), as follows:

Toft v. *Rainer* (1 Cox & Macrae, 39).

Naylor moved for a rule, calling upon the plaintiff to show cause why a writ of prohibition should not issue to the Judge of the County Court of Cambridgeshire, held at Cambridge, under 9 & 10 Vict. c. 95, forbidding him to proceed further in this case. It appeared by affidavits that the defendant was summoned to the Court to answer a plaint, claiming a particular sum upon a contract for goods sold and delivered; that, upon his appearing, he was asked by the Judge what he had to say in answer to the plaint, and that he then said that the plaintiff had recovered a judgment against him in the Borough Court of Cambridge for the same debt, and had taken some of his goods in execution, which plea the plaintiff admitted to be true, but, notwithstanding the Judge made an order upon the defendant to pay 3*l.* 1*s.* 9*d.* It was submitted that the Judge was wrong; that the plea was a good answer to the claim, and was not disputed by the plaintiff. The case was likened to cases in the Spiritual Courts, in which the Superior Courts of Common Law are accustomed to interfere, not only when the Spiritual

Courts entertain matters altogether foreign to their jurisdiction, but also when they put a wrong construction or interpretation upon Common or Statute Law, or if they require unnecessary proof, such as two witnesses to a fact which is proveable by one; and 5 East, 345, was cited as an authority.

Wilde, C. J.—There is no point in which it can be said that the Judge of the local Court had not jurisdiction. When the plea was pleaded, he had power to decide whether the plea were good or bad. It was a matter within his jurisdiction, and he was compelled to decide upon the validity of the plea. In ordinary cases if the Judge of an Inferior Court come to a wrong decision, a writ of error may be brought. In this case the power to bring a writ of error is taken away by the statute regulating the Courts. There is no ground for supposing that in the present case there is a remedy by writ of prohibition.

Coltman, J.—The cases in the Spiritual Courts are in no respect parallel. The Judges there are not Judges of the Common Law. The Judges of the new County Courts are so.

Maule, J.—This would be a case for a writ of error if the writ of error were not taken away by the statute. Then we cannot circuitously give the defendant the benefit of a writ of error which the Act of Parliament says he is not to have.

Williams, J.—This application is founded upon nothing more nor less than a suggestion that the Judge of the County Court was wrong in a point of law. If we were to grant it, we ought, whenever one of these Judges is wrong in a point of law, to issue a prohibition. I am not satisfied that the Judge made any mistake at all; but whether he made a great or a small mistake, or none, the matter was within his jurisdiction, and he was competent to decide it.

So the Judge has absolute discretion over every question of *fact* within his jurisdiction, and the Superior Court will not review his decision, however erroneous. It was so decided in *Robinson* v. *Lenaghan* (1 Cox & Macrae, 97), where the Court of Exchequer refused a prohibition applied for on the ground that the summons had never been served, asserting that it was entirely in the discretion of the Judge as to what he should deem sufficient proof of service. In *Zohrab* v. *Smith* (1 Cox & Macrae, 106), Coleridge, J. so held in the Bail Court, adding his

Robinson v. *Lenaghan* (1 Cox & Macrae, 97.)

Zohrab v. *Smith* (1 Cox & Macrae, 106).

own opinion that the Judge of the County Court has jurisdiction if *the cause* lie within his jurisdiction. In *Waters* v. *Handley* (1 Cox & Macrae; 1 C. C. Chron. 279), the Court of Common Pleas has decided that where it appeared that defendant had never been summoned, and the Judge of the County Court had, nevertheless, proceeded to adjudicate in the matter, this Court, considering the determination whether process was regular or not to be properly in the Judge of the County Court, will not interfere by prohibition.

Waters v. *Handley* (1 C.C.Chron. 279, 1 Cox & Macrae).

Clear and explicit as the language of this section may appear, already many questions have arisen as to *the limits* of this authority; but on close examination they will be found to turn upon the question of the jurisdiction of *the Court*, whether the subject-matter itself has been brought within it, rather than upon the amount of authority vested in *the Judge*.

Time at which jurisdiction commences.

The principal point for discussion has related to the time at which a subject-matter or the parties are to be deemed within the jurisdiction of the Court, for this jurisdiction having once attached, there is and can be no serious question as to what are the powers of the Judge in relation to it. And upon this the authorities are conflicting, and it is certainly very difficult to arrive at any satisfactory conclusion. But as this question must be considered in the following Book, when treating of PROHIBITION, the reader is referred to the chapter on Prohibition for a further review of it, and here we will examine only what are the powers of the Judge over matters and persons that are assumed to be within his jurisdiction.

Jurisdiction of Judge.

1. To appoint Courts.

1. He is to appoint the times for holding the Courts, so that a Court shall be holden within his district once at least in every calendar month (sect. 56), and, by sect. 81, he is empowered "from time to time to adjourn any Court, or the hearing or further hearing of any cause."

2. May act as justice of the peace.

2. He may act as a justice of the peace if in the commission of the peace for the county or division of a county for which he is appointed Judge of the County Court, even though not qualified by estate: (sect. 21).

3. As commissioner in Chancery.

3. He may act as a commissioner in Chancery: (sect. 22.)

4. To adopt practice of

4. In any case not expressly provided for by the

statute, or by the rules and forms framed by the Judges, "the general principles of practice in the Superior Courts of Common Law may be adopted and applied, at the discretion of the Judges, to actions and proceedings in their several Courts:" (sect. 78.)

As to the Courts of Common Law.

5. The Judge may "make orders for granting time to the plaintiff or defendant to proceed in the prosecution or defence of the suit:" (sect. 81.)

5. May grant time.

6. By leave of the Judge, any other person allowed by the Judge (except counsel or attorney), may appear for a party. He may *permit* counsel, attorney, or other person "to argue any question as counsel for any other person in any proceedings," but they may not do so without such permission: (sect. 91.)

6. May regulate advocates.

7. "In all actions where the *amount* claimed shall not exceed 5*l.*, it shall be lawful for the Judge, *in his discretion*, on the application of either of the parties, to order that such action be tried by a jury:" (sect. 70.) But where the amount claimed is above 5*l.* he has no such discretion, and the right to demand a jury is absolutely vested in either of the parties: sect. 70.

7. May order jury.

8. A witness refusing or neglecting to attend when summoned, or to produce documents, or to be sworn, or to give evidence, is "to forfeit and pay such fine not exceeding 10*l.* *as the Judge shall set on him,* and the whole or any part of such fine, *in the discretion of the Judge,* after deducting the costs, shall be applicable towards indemnifying the party injured by such refusal or neglect, and the remainder thereof shall form part of the general fund of the Court in which the fine was imposed:" (sect. 86.)

8. May fine witnesses.

9. If the plaintiff does not appear, the Judge is empowered to nonsuit him, thus:

9. May order nonsuit.

Section 79.

Proceedings if plaintiff does not appear or prove his case.

Sect. 79. And be it enacted, that if upon the day of the return of any summons, or at any continuation or adjournment of the said Court, or of the cause for which the said summons shall have been issued, the plaintiff shall not appear, the cause shall be struck out; and if he shall appear, but shall not make proof of his demand to the satisfaction of the Court, it shall be lawful for the Judge to nonsuit the plaintiff, or to give judgment for the defendant, and in either case, where the defendant shall appear and shall not admit the demand, to award to the

BOOK IV. THE JURISDICTION. — *Cap.* 5. *As to the Officers.*

defendant, by way of costs and satisfaction for his trouble and attendance, such sum as the Judge in his discretion shall think fit, and such sum shall be recoverable from the plaintiff by such ways and means as any debt or damage ordered to be paid by the same Court can be recovered: provided always, that if the plaintiff shall not appear when called upon, and the defendant, or some one duly authorized on his behalf, shall appear, and admit the cause of action to the full amount claimed, and pay the fees payable in the first instance by the plaintiff, the Court, if it shall think fit, may proceed to give judgment as if the plaintiff had appeared.

10. May proceed to judgment in default of defendant's appearance. *Section* 80.

10. If the defendant does not appear, the Judge is empowered to proceed to judgment, thus:

Proceedings if the defendant does not appear.

Sect. 80. And be it enacted, that if on the day so named in the summons, or at any continuation or adjournment of the Court or cause in which the summons was issued, the defendant shall not appear, or sufficiently excuse his absence, or shall neglect to answer when called in Court, the Judge, upon due proof of service of the summons, may proceed to the hearing or trial of the cause on the part of the plaintiff only, and the judgment thereupon shall be as valid as if both parties had attended: provided always, that the Judge in any such case, at the same or any subsequent Court, may set aside any judgment so given in the absence of the defendant, and the execution thereupon, and may grant a new trial of the cause, upon such terms, if any, as to payment of costs, giving security for debt or costs, or such other terms as he may think fit, on sufficient cause shown to him for that purpose.

11. May order new trial.

11. But the Judge may direct a new trial in every case upon such terms as he may think reasonable.

Section 89. Judgment how far final

Sect. 89. And be it enacted, that every order and judgment of any Court holden under this Act, except as herein provided, shall be final and conclusive between the parties, but the Judge shall have power to nonsuit the plaintiff in every case in which satisfactory proof shall not be given to him entitling either the plaintiff or defendant to the judgment of the Court, and shall also in every case whatever have the power, if he shall think fit, to order a new trial to be had upon such terms as he shall think reasonable, and in the meantime to stay the proceedings.

Upon this power a question has been raised in the Bail Court, before WIGHTMAN, J., in the case of *Crowe* v. *Hunt* (1 C. C. Chron. 282). The defendant had been sued in the County Court under sect. 122 to recover possession of a tenement. At the trial the Judge nonsuited the plaintiff, with leave to move at the next court-day to set aside the nonsuit, no leave being reserved (as it was sworn) to enter a verdict for the plaintiff. In due time, before the next court-day, defendant received notice that plaintiff would apply to set aside the nonsuit and enter a verdict for the plaintiff. The defendant did not attend, and the Court, in his absence, set aside the nonsuit, and ordered a verdict to be entered for the plaintiff. The defendant thereupon applied for a prohibition, on the ground that, as no leave had been reserved at the hearing to enter the verdict for the plaintiff, the Judge had not jurisdiction afterwards to direct it to be entered. Without deciding this point, the learned Judge held that the defendant having admitted receipt of the notice in due time, and not attending to oppose the motion, could not, after lying by, be permitted now to make the objection.

Crowe v. *Hunt* (1 C. C. Chron. 282).

12. The Judge may, "in any case, with the consent of both parties to the suit, order the same, *with or without other matters within the jurisdiction of the Court in dispute* between such parties, to be referred to arbitration," in the manner therein described (for which see the chapter on *Arbitration*, in "*the Practice of the Courts*," *post*). And "the Judge may, if he think fit, on application to him at the first Court held after the expiration of one week after the entry of such award, set aside any such award so given as aforesaid, or may, with the consent of both parties aforesaid, revoke the reference, or order another reference to be made in the manner aforesaid:" (sect. 77.)

12. May order arbitration.

13. The Judge "may make orders concerning the time or times, and by what instalments any debt or damages or costs for which judgment shall be obtained in the said Court, shall be paid, and all such moneys shall be paid into Court, unless the Judge shall otherwise direct:" (sect. 92.)

13. May order payment by instalments.

14. The Judge may commit for fraud in the incurring of a debt, and for neglecting or refusing to pay any instalment ordered by the Court: (sects. 98, 99.)

14. May commit for fraud.

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15. May rescind or alter order of commitment.

15. And he is empowered to rescind or alter any such order, and to make a new order, thus:

Section 100. — Power of Judge to rescind or alter orders.

Sect. 100. And be it enacted, that it shall be lawful for the Judge of any Court before whom such summons shall be heard, if he shall think fit, whether or not he shall make any order for the committal of the defendant, to rescind or alter any order that shall have been previously made against any defendant so summoned before him for the payment, by instalments or otherwise, of any debt or damages recovered, and to make any further or other order, either for the payment of the whole of such debt or damages and costs forthwith, or by any instalments, or in any other manner as such Judge may think reasonable and just.

16. May commit for fraud at the hearing.

16. A like power of examining the parties, and of committing the defendant for the same causes as are detailed in section 99, is given to the Judge "at the trial of the same," by section 101.

17. May suspend execution.

17. The Judge is also empowered to suspend execution in certain cases, by section 105, as follows:

Section 105. — Power to Judge to suspend execution in certain cases.

Sect. 105. And be it enacted, that if it shall at any time appear to the satisfaction of the Judge, by the oath or affirmation of any person, or otherwise, that any defendant is unable, from sickness or other sufficient cause, to pay and discharge the debt or damages recovered against him, or any instalment thereof ordered to be paid as aforesaid, it shall be lawful for the Judge, in his discretion, to suspend or stay any judgment, order, or execution given, made, or issued in such action, for such time and on such terms as the Judge shall think fit, and so from time to time until it shall appear by the like proof as aforesaid that such temporary cause of disability has ceased.

18. May commit or fine for contempt of Court.

18. He is empowered, by section 113, to commit to prison, for any time not exceeding seven days, or to impose a fine not exceeding 5*l.* on any person who "shall wilfully insult the Judge, or any Juror, or any Bailiff, Clerk, or officer of the said Court, for the time being, during his sitting or attendance in Court, or in going to or returning from the Court, or shall wilfully interrupt the proceedings of the Court, or

otherwise misbehave in Court;" and any Bailiff or officer of the Court, with or without the assistance of any other person, may, "by order of the Judge," "take such offender into custody, and detain him until the rising of the Court:" (sect. 113.) For further particulars as to this proceeding, see *ante*, p. 141; and the next chapter as to the Jurisdiction over the Public.

19. The Judge is empowered also to impose a fine not exceeding 5*l.* on any person who shall assault any officer or Bailiff while in the execution of his duty, or for any rescue made, or attempted to be made, of any goods levied under process of the Court: (sect. 114.) 19. May fine for assaulting officer.

20. And the Judge is to adjudicate on conflicting claims to goods taken in execution: (see the chapter on *Interpleader*, in the Book *on the Practice of the Courts, post.*) 20. May adjudicate in interpleader.

21. And also to give possession of tenements of a rent or value not exceeding 50*l.* per annum: (sect. 122.) (See the Book on this subject in the second volume.) 21. May give possession of tenements.

22. In the case of *Foster & anor.* v. *Temple* (1 C.C. Chron. 277; 1 Cox & Macrae), it was held by the Court of Queen's Bench, that where a summons in the County Court has been dismissed upon the ground of a variance from the plaint, the Judge may order another summons to issue upon the original plaint, dated as of the day on which such original plaint was entered, for the purpose of saving the Statute of Limitations. "The first summons," said PATTESON, J., "was no summons at all. The only summons really issued upon the plaint was the second, and that was properly dated." 22. May order another summons on same plaint. *Foster* v. *Temple* (1 C.C. Chron. 277; 1 Cox & Macrae).

23. The very important question of the jurisdiction of the Judge, where title or the validity of a devise, &c. is in dispute, is minutely examined, *ante*, p. 252. 23. Where title disputed.

24. Where a summons has not been personally served, and the defendant does not appear, it is to be proved, *to the satisfaction of the Judge*, that the service of such summons has come to the knowledge of the defendant ten clear days before the return day: (rule 11.) What is sufficient proof of this is entirely in the discretion of the Judge: (see *Robinson* v. *Lenaghan*, 1 Cox & Macrae, 97; *Zohrab* v. *Smith*, 1 Cox & Macrae, 106; *Waters* v. *Handley*, 1 Cox & Macrae, 1 C. C. Chron. 279.) 24. Service of summons to be proved to his satisfaction.

25. May order successive summonses on same plaint.

25. And where such summons has not been served, the Judge may, *in his discretion*, in order to save the Statute of Limitations, direct another summons or successive summonses to be issued, bearing the same date and number as the first summons: (rule 12.) And see *Foster & anor.* v. *Temple*, in the Queen's Bench (1 C. C. Chron. 277.)

26. May order costs in certain cases.

26. Where a plaintiff accepts in satisfaction money paid into Court, and omits to give notice of his acceptance of the same, and the suit proceed, and plaintiff do not appear, he is to pay the defendant such costs as he may incur in appearing, *or such other sum of money as the Judge may order*: (rule 16).

27. May adjourn hearing.

27. Where due notice of set-off pleaded has not been given to the plaintiff, *the Judge, in his discretion, and on such terms as he shall think fit*, may adjourn the hearing, "to enable the defendant to give such notice, such number of days before the day to which the hearing may be adjourned, *as the Judge shall think proper*:" (rule 18). And so in like manner where defendant pleads a special defence and due notice is not given: (rule 19.)

28. To order as to money paid into Court.

28. Where money is paid into Court under an execution or order, and the Clerk receives notice from any party of intention to apply to set aside same, the Clerk is to retain same until after such application has been determined, or *until the Judge shall otherwise order*: (rule 22.)

29. Costs in an action against an executor.

29. Where an executor or administrator pleads *plene administravit*, and the judgment is for the defendants, *the costs shall be in the discretion of the Judge*: (rule 31.)

30. To order allowance of witnesses.

30. The Judge is in each case to order "what number of witnesses shall be allowed in taxation of costs:" (rule 35.)

31. Service of summonses under section 98.

31. In summonses upon judgments, under section 98, service "at any time before the time appointed for the appearance of the party *may be deemed by the Judge to be good service*, if it shall be proved to his satisfaction that such party was about to remove out of the jurisdiction of the Court:" (rule 38.)

CAP. VI.

AS TO THE PROFESSION.

The relationship of the Profession to the County Courts has been already partially considered in treating of the jurisdiction as to Parties in the 3rd chapter of this Book (*ante*, p. 264), to which the reader is referred for further particulars. It will be desirable here briefly to review the jurisdiction of the Courts in relation to counsel and attorneys.

Book IV THE JURISDICTION. Cap. 6. *As to the Profession.*

304. *Definition.*—By the interpretation clause (s. 142), it is enacted that the words "attorney-at-law" shall be understood to include a solicitor in any Court of Equity.

Definition.

305. *Counsel or Attorney may appear for either party.*—The privileges and fees of the profession are regulated by sect. 91 of 9 & 10 Vict. c. 95, and 13 & 14 Vict. c. 61, s. 6, as follows:

Section 91. Who may appear for any party in the Superior Courts.

Sect. 91. And be it enacted, that no person shall be entitled to appear for any other party to any proceeding in any of the said Courts unless he be an attorney of one of Her Majesty's Superior Courts of Record, or a barrister-at-law instructed by such attorney on behalf of the party, or, by leave of the Judge, any other person allowed by the Judge to appear instead of such party; but no barrister, attorney, or other person, except by leave of the Judge, shall be entitled to be heard to argue any question as counsel for any other person in any proceeding in any Court holden under this Act; and no person, not being an attorney admitted to one of Her Majesty's Superior Courts of Record, shall be entitled to have or recover any sum of money for appearing or acting on behalf of any other person in the said court; and no attorney shall be entitled

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to have or recover therefore any sum of money, unless the debt or damage claimed shall be more than forty shillings, or to have or recover more than ten shillings for his fees and costs, unless the debt or damage claimed shall be more than five pounds, or more than fifteen shillings in any case within the summary jurisdiction given by this Act; and in no case shall any fee exceeding one pound three shillings and sixpence be allowed for employing a barrister as counsel in the cause; and the expense of employing a barrister or an attorney, either by plaintiff or defendant, shall not be allowed on taxation of costs in the case of a plaintiff where less than five pounds is recovered, or in the case of a defendant where less than five pounds is claimed, or in any case unless by order of the judge.

13 & 14 Vict. c. 61, s. 6.

Sect. 6. And be it enacted, that the fees to be taken by barristers-at-law and attorneys practising in the said Courts, in cases brought within the jurisdiction given by this Act, shall be as follows: an attorney shall be entitled to have or recover a sum not exceeding one pound ten shillings for his fees and costs, where the debt, damage, or demand claimed in any plaint in covenant, debt, detinue, or assumpsit shall not exceed thirty-five pounds, or two pounds in any other case, within the jurisdiction given by this Act: and in no case shall any fee exceeding two pounds four shillings and sixpence be allowed for employing a barrister as counsel in the cause; and the expense of employing a barrister or an attorney, either by plaintiff or defendant, shall not be allowed on taxation of costs, unless by order of the Judge; and the Judges of the said Courts respectively shall from time to time determine in what cases such expenses shall be so allowed.

It follows, therefore, that

1. An attorney may of right *appear* for any party.
2. Counsel *instructed by an attorney* may of right appear for any party.
3. But neither counsel nor attorney may "argue any question as counsel for any other person in any proceeding in any Court holden under this Act," except by leave of the Judge.

306. *Fees for such Appearance.*—The following is,

therefore, the scale of fees now allowed to counsel and attorneys:

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In Covenant, Assumpsit and Debt.

Fees of counsel and attorney.

	Counsel.			Attorney.		
	£.	s.	d.	£.	s.	d.
Under 2*l*.	0	0	0	0	0	0
Above 2*l*. and not exceeding 5*l*.	1	3	6	0	10	0
„ 5*l*. „ „ 20*l*.	1	3	6	0	15	0
„ 20*l*. „ „ 35*l*.	2	4	6	1	10	0
„ 35*l*. „ „ 50*l*.	2	4	6	2	0	0

In Trespass, or Trespass on the Case.

	Counsel.			Attorney.		
	£.	s.	d.	£.	s.	d.
Under 2*l*.	0	0	0	0	0	0
Above 2*l*. and not exceeding 5*l*.	1	3	6	0	10	0
„ 5*l*. „ „ 20*l*.	1	3	6	0	15	0
„ 20*l*. „ „ 50*l*.	2	4	6	2	0	0

And in no case is any fee to be allowed, unless by order of the Judge.

The costs of employing a barrister or attorney on either side is *not* to be allowed, on taxation of costs,

To plaintiff, where *less* than 5*l*. is *recovered*.

To defendant, where *less* than 5*l*. was *claimed*.

The distinction here is important to be observed. The plaintiff's right to costs depends upon the sum he actually *recovers*, no matter how much he *claims*; the defendant's upon the sum *claimed*. This may operate very hardly in many cases, as where a plaintiff claims a debt of 20*l*. defendant having a set-off which reduces it below 5*l*. Plaintiff is compelled to *claim* the whole of his demand, and to prove it, and perhaps to contest defendant's set-off, yet is not to be allowed the costs of professional assistance in doing so, although the *conflict* was in fact for the larger sum. Besides, it often happens that debts and demands below 5*l*., especially in tort, require professional assistance as much as larger amounts. This should be rectified when any amendment of the act is made.

Counsel's and attorney's fees both allowed.

It is the practice of the Judges, where counsel is employed, to allow the attorney's fee also, because the Act provides that counsel shall not appear unless instructed by an attorney.

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Two questions have arisen upon the construction to be put upon the statute in respect of the fees of an attorney, both of which have now been decided.

Fees as between attorney and client.

1st. It was questioned whether the fees above prescribed were to be considered as the limit of costs between attorney and client, or only between party and party.

Fees for business preliminary to the hearing.

2nd. Whether the expression "*appearing* or *acting* on behalf of any other person *in* the said Court" was to be held to mean the appearing and acting at the hearing only, or extended to all business transacted *out* of Court in reference to the suit, as for procuring evidence, preparing brief, and such like.

Ex parte Clipperton, Re Green (11 Law T. 351; 1 C. C. Chron. 298; 1 Cox & Macrae.)

In the case of *Ex parte Clipperton, Re Green* (11 L. T. 351; 1 C. C. Chron. 298), in the Queen's Bench, both these points were raised, and after the Court had taken time to consider, decided. That Court held that the statute operates to limit the costs of an attorney to the prescribed fee as respects his charges to his client, as well as the costs between party and party, and also that the prescribed fee was the extent of the costs that could be claimed for any work done in or about an action in the County Court, including all matters preliminary to the hearing. That decision has, however, now been overruled by the Court of Common Pleas in *Ex parte Keighley* (3 C. C. Chron. 85), and subsequently by the Court of Queen's Bench itself in *Re Toby* (3 C. C. Chron. 169.)

The judgment in the former of these cases was as follows :—

MAULE, J.—This was a motion to review the taxation of an attorney's bill. The Master had disallowed certain items for business done and preliminary inquiries before commencing a a suit in one of the County Courts established by the Act 9 & 10 Vict. c. 95. The ground of the disallowance was, that the 91st section of the Act prevented an attorney from having, as remuneration for his services in any suit, any larger sum than fifteen shillings. This construction of the section appears to have been adopted by the Court of Queen's Bench in the case of *Ex parte Green* (12 Jur. 1044.) Having heard the case argued on this question, and having taken time to consider it, we find ourselves compelled to adopt a different construction of the section in question. That section begins by providing

that no person but an attorney, or barrister-at-law instructed by such attorney, on behalf of the party, or any other person allowed by the Judge to appear instead of such party, shall be entitled to appear in the County Court for any other party, and such person is, by the next clause, restricted from having a title to be heard to argue any question as counsel without leave of the Judge. This is followed by a clause in the following words:—"And no person, not being an attorney admitted to one of Her Majesty's Superior Courts of Record, shall be entitled to have or recover any sum of money for appearing or acting on behalf of any other person in the said court; and no attorney shall be entitled to have or recover therefore any sum of money, unless the debt or damage claimed shall be more than forty shillings, or to have or recover more than ten shillings for his fees and costs, unless the debt or damage claimed shall be more than 5*l.* or more than fifteen shillings in any case within the summary jurisdiction, given by this act." The section then goes on to provide "that no fee exceeding 1*l.* 3*s.* 6*d.* shall be allowed for employing a barrister as counsel in the cause, and the expense of employing a barrister or an attorney shall not be allowed on taxation of costs in case of a plaintiff unless 5*l.* is recovered, or in case of a defendant unless 5*l.* is claimed, or in any case without an order of the Judge." The first clause, containing a description of the persons to be allowed to appear in the court for another party, seems very clearly to apply only to the appearance *in the court* of such person as the representative of a party who would otherwise have to appear for himself. The next provision, restricting the party to be heard to argue as counsel, also evidently applies only to the proceedings *in court.* The clause in question begins with this provision:—"No person, not being an attorney admitted to one of Her Majesty's Courts of Record, shall be entitled to have or recover any sum of money for appearing or acting on behalf of any other person *in the said Court.*" These words certainly in their literal construction apply only to what is done in the Court; and this is not only the literal sense, but the natural and obvious sense of the words, and the subject of the preceding paragraph of the section, being matter in Court only, confirms this construction. Indeed, it would be difficult to conceive words more expressly to confine the enactment to what is done in Court than those actually do, viz., "appearing

or acting on behalf of any other person." The words next following, on which the present question immediately arises, are "no attorney shall be entitled to have or recover *therefor* any sum of money unless the debt or damage claimed shall be more than forty shillings, or to have or recover more than ten shillings for his fees and costs unless the debt or damage claimed shall be more than 5*l.* or more than 15*s.* in any case within the summary jurisdiction given by this act." Here the word "therefore" clearly is intended to refer to the preceding words "for appearing or acting on behalf of any other person *in the said Court.*" So that the right to have or recover anything in cases not above forty shillings is also taken away only in respect of "appearing or acting on behalf of any other person in the said Court." It is true the word "therefore" is not used in the provision, where ten shillings or fifteen shillings may be recovered; the words being—"to have or recover more than ten shillings for his fees or costs," without saying "therefore." But it appears to us that the provision is to be considered as applying to fees and costs of appearing or acting on behalf of any other person, and only to the appearing and acting on behalf of such person *in Court.* If this were not so, it would follow, in cases not exceeding forty shillings, the attorney might recover for what was done out of Court, but not in cases exceeding that amount. Indeed, the Court of Queen's Bench, as reported in the *Jurist,* seem to have considered that the restriction of the fees to ten shillings and fifteen shillings shall be understood as the fees for appearing and acting *in the Court* on behalf of another person, and express that opinion in the commencement of their judgment, observing that "the words of the section are very clear, 'that no attorney shall be entitled to have or recover *therefor,*' that is, for appearing or acting on behalf of any other person in the County Court, more than the sums specified." Taking the language of the Legislature in its ordinary sense, the construction in question of the word "therefore" does not apply to business done out of Court before the suit is commenced. We think that, looking to the general scope of the enactment, we ought to come to the same conclusion on the subject. The proceedings in the County Courts are a very fit subject of legislation. In establishing such Courts, the Act contemplates that the hearing of causes would be usually short, and therefore the limitation of the fees for

parties appearing therein is naturally incident to such Courts, and such regulations are not unusual in respect of proceedings in Courts. But when one man employs another to do work and labour for him for a reasonable remuneration, it seems unreasonable to say the contract shall not be binding if the employment is in a suit in the County Court, but shall be binding if it is not. We think such a construction as this ought not to be allowed unless by implication, and there is none such here. The Court of Queen's Bench intimate an opinion in *Ex parte Green*, that the Legislature did not intend to make any distinction between an attorney's right to recover from the opposite party and his own client; but we think there is no reason for construing the Act as abolishing the existing distinction between the costs to be allowed between party and party, and the remuneration that the attorney is to recover from his client. The framers of the Act use appropriate words in speaking of both kinds of claims ; the attorney's is described as a right "to have or recover," while the costs between party and party are described as costs allowed on taxation. On the whole, we think there is nothing in this section to take away the right of an attorney to be paid a reasonable amount for work done out of Court, before the institution of the suit, or to take away the right of the Superior Courts which alone have the jurisdiction to tax attorneys' bills, and to allow a reasonable remuneration for this description of labour. The rule must, therefore, be made absolute. *Rule absolute.*

The judgment of the Court of Queen's Bench in *Re Toby* (3 C. C. Chron. 169), reversing its own judgment in *Ex parte Clipperton*, was this:—

Lord Campbell, C.J., now delivered the judgment of the Court.—This was an application to the Court to rescind an order for the taxation of the bill of costs of Mr. Toby, an attorney, for business done in a suit in a County Court, or why the Master should not review his taxation and direct the client to repay what had been refunded to him under the Master's *allocatur*. The question was as to the amount of costs to which an attorney was entitled in respect of a suit in the County Court. It appeared that Mr. Toby, an attorney of this Court, had been retained by a Mr. Shirreff to conduct a suit for him in one of the County Courts established under the 9 & 10 Vict. c. 95, and

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that, in the result, Mr. Shirreff recovered the sum of 11*l.* 8*s.* 7*d.* for the debt and costs in the action, which sum was paid by the defendant to Mr. Toby, the plaintiff's attorney. Mr. Toby sent in a bill of costs to his client, in which, after giving him credit for 11*l.* 8*s.* 7*d.*, the debt and costs recovered from the defendant, there remained the sum of 10*l.* 17*s.* 4*d.* due to Mr. Toby, which the client paid to him under the apprehension, as he says, of being sued for the amount. Upon the application to tax, and before the Master, Mr. Shirreff, the client, relied on the decision of this Court in *Ex parte Clipperton*, reported in 12 Jur. 1044, in which it was held that, under the 91st section of the County Courts Act, an attorney was restrained from recovering more than 15*s.* for his services in a suit in one of those Courts. A similar question subsequently arose in the Court of Common Pleas (*Ex parte Keighley*, 14 L. T. 448), and, after consideration, that Court then came to the conclusion that the restraining clause of the act applies only to appearing and acting as an attorney in Court, and not to his services out of Court, and for advising and in getting up the case. The 91st section is not very clearly worded. The object of the act was to enable parties to carry on suits for amounts not exceeding 20*l.* at a comparatively small expense; but as the words of the section are certainly capable of the construction put upon them by the Court of Common Pleas, and hardship may in some cases arise from the narrower construction adopted by this Court in the case of *Ex parte Clipperton*, we feel disposed, on consideration, to adopt the same conclusion, more especially as it is most important that the practice should be uniform; and we think that the rule should be absolute, not for rescinding the order of the judge, but for a review of the taxation and repayment to Mr. Toby of any sum he may have been obliged to pay to Mr. Shirreff beyond what, on a review of the taxation, the Master finds ought to have been paid.

Rule absolute, to review taxation.

Hence it appears that the amount of costs limited by the statutes in question applies only to business done *in Court*, and any business done by an attorney out of Court with reference to an action in the County Court may be charged for upon the usual scale, or as the Taxing Master may determine.

CAP. VII.

AS TO THE PUBLIC.

The County Courts are invested with certain powers over the general public for the purposes of preserving order and maintaining their authority.

307. *Power to commit for Contempt.*—This is given by sect. 113, as follows:

Section 113.

Power of committal for contempt.

Sect. 113. And be it enacted, that if any person shall wilfully insult the Judge or any Juror, or any Bailiff, Clerk, or officer of the said Court, for the time being, during his sitting or attendance in Court, or in going to or returning from the Court, or shall wilfully interrupt the proceedings of the Court, or otherwise misbehave in Court, it shall be lawful for any Bailiff or officer of the Court, with or without the assistance of any other person, by the order of the Judge, to take such offender into custody, and detain him until the rising of the Court; and the Judge shall be empowered, if he shall think fit, by a warrant under his hand, and sealed with the seal of the Court, to commit any such offender to any prison to which he has power to commit offenders under this Act for any time not exceeding seven days, or to impose upon any such offender a fine not exceeding five pounds for every such offence, and in default of payment thereof to commit the offender to any such prison as aforesaid for any time not exceeding seven days, unless the said fine be sooner paid.

308. *Penalty for assaulting an Officer, or rescuing Goods taken in Execution.*—This is provided by sect. 114, as follows:

Section 114.

Penalty for assaulting Bailiffs, or rescuing

Sect. 114. And be it enacted, that if any officer or Bailiff of any Court holden under this Act shall be assaulted while in the execution of his duty, or if any rescue shall be made or attempted to be made of any goods levied under process of the Court, the

Goods taken in execution.

person so offending shall be liable to a fine not exceeding five pounds, to be recovered by order of the Court, or before a Justice of the Peace as hereinafter provided; and it shall be lawful for the Bailiff of the Court or any Peace Officer in any such case to take the offender into custody (with or without warrant), and bring him before such Court or Justice accordingly.

These provisions suggest no remark. For a decision of some interest upon sect. 113 see *ante*, p. 141.

BOOK V.

APPEAL TO SUPERIOR COURTS.

The jurisdiction of the County Courts may be brought under the cognizance of the Superior Courts, by four processes.

1. Mandamus.
2. Prohibition.
3. Certiorari.
4. Suggestion.

Of each in its order.

CAP. I.

MANDAMUS.

309. *The Writ of Mandamus.*—This is a high prerogative writ, in its form, a command issuing in the Queen's name from the Court of Queen's Bench, and directed to any person, corporation, or inferior Court of judicature within the Crown's dominions, requiring them to do some particular thing therein specified, which appertains to their office and duty, and which the Court of Queen's Bench has previously determined, or at least supposes, to be consonant to right and justice. In its application it may be considered as confined to cases where relief is required in respect of the infringement of some *public* right or duty (*R.* v. *Bank of England*, 2 B. & Ald. 622), and where no effectual relief can be obtained in the ordinary course of an action at law. Such is the general principle; but as to the specific instances in

What is the writ of *mandamus*

which the writ will be granted, they are too numerous for complete detail here. But, among other things, it issues to the Judges of any Inferior Court, commanding them to do justice according to the power of their office, wherever the same is delayed. For it is the peculiar business of the Court of Queen's Bench to superintend all inferior tribunals, and therein to enforce the due exercise of those judicial or ministerial powers with which the Crown or Legislature has invested them, and this, not only by restraining their excesses, but also by quickening their negligence and obviating their denial of justice: (3 Steph. Com. 663.)

How granted.

This writ is granted on suggestion, by the oath of the party injured of his own right and the denial of justice below—whereupon, in order more fully to satisfy the Court that there is a probable ground for such interposition, a rule is made (except under particular circumstances, where a rule will be granted absolute in the first instance), directing the party complained of to show cause why a writ of *mandamus* should not issue, and if he shows no sufficient cause, and does not submit without contest to the application, the writ itself is issued at first in the alternative, either to do this or signify some reason to the contrary; to which a *return* or answer must be made at a certain day.

Proceedings in *mandamus.*

If the party make no return he is punishable for his contempt by attachment. If he make a return, and it is insufficient in law or false in fact, a *peremptory mandamus* issues, to which no return is admitted but a certificate of obedience. By statute 1 Will. 4, c. 21, in all cases of *mandamus* the return may be pleaded to or traversed by the prosecutor, and his antagonist may reply, take issue, or demur, and the same proceedings may be had as if an action on the case had been brought for making a false return, and after judgment obtained by the prosecutor, he shall have a peremptory writ of *mandamus* to compel his admission or restitution—which latter, in case of an action, is effected by a writ of restitution. So that now the writ of *mandamus* is (from the period at least of its return) assimilated to an action, and the more closely, because, by the same Acts, it is also provided, that the prosecutor, if successful, shall recover damages, and that the successful

1 & 2 Will. 4, c. 21.

party shall, in all cases, upon judgment after issue joined, or by default, be entitled to his costs. In addition to which it has been recently enacted by 6 & 7 Vict. c. 67, that the prosecutor objecting to the validity of the return shall do so by way of demurrer to the same, in like manner as in personal actions, and thereupon the writ, return, and demurrer shall be entered on record, and the Court shall adjudge either that the return is valid in law, or that it is not valid in law; and if it adjudge that the writ is valid but the return invalid, shall award a peremptory *mandamus;* and shall also, in any event, award costs to be paid to the successful party. And by statute 1 & 2 Will. 4, c. 58, s. 8, it is provided for the relief of officers and other persons to whom such writ is directed, commanding them to do or perform things in respect of which they have no claim or interest, that it shall be lawful for the Court to which application is made for the writ of *mandamus* to relieve them from the liability incident to the execution thereof, by calling upon any other person having or claiming any interest in the matter of such writ to appear and show cause against the issuing of the same, and thereupon to make such rules and orders between all parties as the circumstances of the case may require: (3 Steph. Com. 666—8.)

1 & 2 Will. 4, c. 58, s. 8.

Such being the general principles and practice of the writ of *mandamus* let us now see

310. *In what Cases it issues.*—In his valuable treatise on this writ, Mr. Tapping thus (in page 9) states the effect of the various decisions: "The Court of B. R., as the general guardian of public rights, and in exercise of its authority to grant the writ, will render it, as far as it can, the suppletory means of substantial justice in every case where there is no other specific legal remedy for a legal right, and will provide as effectually as it can that *all official duties are fulfilled,* wherever the subject-matter is properly within its control." This principle may be otherwise expressed thus: "That the Court of B. R. will not interpose by granting the extraordinary writ of *mandamus* unless the applicant have not only a specific legal *power,* properly the subject of this writ, a fulfilment of which is demandable from the person to whom such writ must be directed, but also there must not

In what cases *mandamus* will issue

exist a specific legal *remedy* whereby the fulfilment of such power may be compelled; so that the writ will not be granted unless to prevent a failure of justice, that is, it issues upon the assumption that that which ought to have been done has not been done :" (*Id.* p. 10.)

"Formerly the received idea was, that a *mandamus* would be granted only to command the performance of a ministerial duty; but modern cases have gone much further, and it is now the constant practice to grant the writ to command *the performance by any inferior jurisdiction* or *officer* of any public duty for which there is no specific remedy :" (*Tapping on Mandamus*, p. 12.)

But the duty must be imperative and *not discretionary*. A *mandamus* will not go to command the exercise of a discretionary power, except where such discretion is limited as to time and the time has passed : (*Ibid.* p. 13 ; *R.* v. *Treasury Commissioners*, 4 A. & E. 297.) But when "a discretion" is given it is to be understood as a sound discretion *according to law*, for the Court of B. R. will redress things otherwise done : (*Estarik* v. *London* (*City*), Styles, 43.)

For what *mandamus* will go.

So, the Court will not interfere with the discretion of an inferior jurisdiction, where it is exercised in accordance with reasonable rules or practice: (3 Dow. 306). And although there be a discretionary power, yet, if it be exercised with manifest injustice, the Court of B. R. is not precluded from commanding its due exercise, the jurisdiction under such circumstances being clearly established : (*Ex parte Beeke*, 3 B. & Ad. 704 ; *R.* v. *Lancashire* (J.), 7 B. & C. 692.) So, where one is to act according to his discretion and he will not act, nor even consider the matter, the Court of B. R. will, by *mandamus*, command him to put himself in motion to do it : (*R.* v. *North Riding* (J.), 2 Bar. & Cres. 291 ; *R.* v. *Mills*, 2 Bar. & Ad. 578 ; *R.* v. *Holbeche*, 4 T. R. 779.) Thus, if justices reject an application in the exercise of a discretion vested in them, the Court will not interfere; but if they reject it on the ground that they have no power to grant it, the Court will interfere so far as to set the jurisdiction of the magistrates in motion, by directing them to hear and determine upon the application : (*R.* v. *Justices of Kent*, 14 East, 396.)

"It is a general rule that, wherever an Act of Par-

liament gives power to, or imposes an obligation on, a particular person to do some particular act or duty, and provides no specific legal remedy on nonperformance, the Court of B. R. will, in order to prevent a failure of justice, grant, *ex debito justitiæ*, a *mandamus* to command the doing of such act or duty. But the Court will not command as to the manner in which such act shall be done:" (*Tap. on Mand.* 30, and see the cases there cited.)

Mandamus to Inferior Courts.

The Court will, by *mandamus*, command an Inferior Court to exercise all jurisdictions conferred upon it by Act of Parliament. Thus, where the Court of Quarter Sessions decided not to rate the wages of millers, on the erroneous supposition that the Act giving it jurisdiction merely authorized it to rate the wages of husbandmen, the writ was granted: (*R.* v. *Justices of Kent*, 14 East, 395; *Tap. on Mand.* 31.)

The general power of the Court of B. R. over Inferior Courts is thus clearly stated by Mr. Tapping: "It has power to compel them to do any act which by law they should do, whether the obligation arise from a charter, subsist by custom, or be created by Act of Parliament; also to command them to execute faithfully all powers with which they are clothed, wherever the same are either denied or delayed, and to restrain them from intermeddling where they have no jurisdiction:" (p. 105.)

"Wherever there is a particular jurisdiction created by Act of Parliament, the Court of B. R. may command the execution thereof by *mandamus*, and remove their proceedings by *certiorari*, to see whether they have observed their authority: (*R.* v. *Inhab. of Glamorganshire*, 12 Mod. 403.) But though the writ be daily awarded to Judges of Inferior Courts, to give judgment or to proceed in the execution of their authority, yet it is never granted to *aid a jurisdiction*, but only to *enforce* the execution of it:" (*Tap. on Mand.* 106.) Thus, it has been granted against an Inferior Court to command the holding of a Court for the trial of causes: (*R.* v. *Mayor of Wells*, 4 D. 562; *R.* v. *Havering*, 5 B. & A. 691.) To command the steward of a Manor Court to receive a plaint and issue process thereon and to proceed to the hearing and determination thereof: (*R.* v. *Bailiffs of Eye*, 2 D. & R. 176.)

So, the Court of B. R. will command an Inferior

BOOK V. APPEAL TO SUPERIOR COURTS. — Cap. 1. Mandamus. — Mandamus to Inferior Courts.

Court to hear a case in the first instance, and to do whatever is incidentally necessary to such hearing: (*R.* v. *Hewes,* 3 A. & E. 727.) But it will not prescribe the mode of such hearing and determination: (*Tap. on Mand.* 109.) The writ will not be granted to hear and determine, when the tribunal has, in fact, heard and determined, though erroneously: (*R.* v. *Lords of the Treasury,* 10 Ad. & El. 179; *Ex parte Smith,* 4 N. & M. 583.) So, where there is a remedy by appeal, as in the Stannaries Court, the Court of B. R. will not by *mandamus* command a rehearing, because there is not a defect of justice: (*R.* v. *Apleford,* 2 Keb. 846.)

"Where a tribunal of competent jurisdiction has decided a case, the Court of B. R. cannot by *mandamus* command a rehearing; otherwise it might as well call upon the Lord Chancellor to revise any decision he has made: (3 A. & E. 722, per Lord Denman, C. J.) So the Court of B. R. will not interfere to regulate the practice of an Inferior Court, it being the sole judge of its own practice: (*R.* v. *Justices of Suffolk,* 6 M. & S. 57.) But where the *practice* of an Inferior Court is *contrary to law* the Court of B. R. will not sanction it, and therefore will award a *mandamus:*" (*R.* v. *Bottesworth,* W. Kel. 156; *Tap. on Mand.* 110.)

So the Court of B. R. cannot command an inferior jurisdiction to grant a new trial, although it is alleged that injustice has been done: for such a command would be, in fact, to try upon affidavits the truth of any alleged irregularity in a judgment of such Court: (*Ex parte Morgan,* 2 Chit. 250; *Ex parte Smyth,* 4 A. & E. 721; *Tap. on Mand.* 110.)

"It is a general rule that the Court of B. R. will not, by *mandamus,* enforce the process of an Inferior Court, the Judge of which has power to compel obedience to his process: (*R.* v. *Conyers,* 15 L. J. N. S. 300, Q. B.) The writ has been granted to allow an applicant to enter up final judgment, and tax his costs in a plaint duly entered by him in a Manor Court (*R.* v. *Danser,* 6 T. R. 242): to command the Judge of an Inferior Court to examine and inquire whether a writ of inquiry or judgment was obtained by fraud or surprise, though strictly regular in form, and if so to set it aside (*R.* v. *Urling,* Fortes. 198): to command the Sheriffs' Court of London to proceed

to judgment in a case before it: (*Bayley* v. *Bourne*, Stra. 392.) But the Court will not command an Inferior Court to review a judgment actually signed:" (*R.* v. *Justices of Monmouthshire*, 4 B. & C. 846; *R.* v. *Justices of Leicestershire*, 1 M. & S. 442.)

The Court of B. R. will grant a *mandamus* to an Inferior Court to make up a record for the purpose of enabling a party to plead *autrefois convict*, &c., or for any other purpose, and also to give a copy of such record to the applicant's attorney: (*Tap. on Mand.* 111.)

"The granting of a *mandamus* to revise the sentence of another Court is not of course; nor is it of course to grant it in a doubtful case where the Court below, assuming it to be a Court of competent jurisdiction, has exercised that jurisdiction and proceeded to sentence, and the applicant has appealed against that sentence, which has been affirmed on such appeal:" (6 T. R. 110; *Tap. on Mand.* 112.)

Such are the general principles that appear, according to the decided cases, to regulate the practice of *mandamus* in relation to Inferior Courts, here briefly set forth, but which will be found very fully and learnedly treated in Mr. Tapping's treatise on the *Law and Practice of the Writ of Mandamus*, to which the reader is referred for further information. We will now endeavour, as shortly, to show its application to the County Court.

311. *Mandamus to the County Courts.—Mandamus* is the remedy by which the County Courts may be compelled to the performance of any duty imposed upon them by the Act of Parliament. It requires them to act up to their jurisdiction, as Prohibition restrains them from exceeding it. And it is a condition of the issue of the writ of *mandamus*, that there is no other remedy. Practically, therefore, the question at issue will be, in almost all cases, as to the jurisdiction of the County Court, and this will be determined by reference to the cases and arguments collected in the previous part of this treatise devoted to the subject of jurisdiction, and many of the observations in the next chapter on *Prohibition* will be applicable here. It may, however, be submitted that, when the practitioner finds that he cannot obtain redress in the County Court for some matter which

Mandamus to the County Courts.

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he deems to be within its jurisdiction, his remedy will be by an application to the Court of Queen's Bench for a *mandamus*, and in order to ascertain whether there are sufficient grounds for such application he must be assured—

Rules for *mandamus* to the County Court.

1st. That there is no other remedy.

2nd. That the County Court *has* jurisdiction to do the act he requires to be done.

3rd. That it has positively refused to do such act.

4th. That the act is not *discretionary* but imperative.

5th. That it is not merely a matter of practice, unless it be an *illegal* practice.

6th. That it is required to *enforce* the exercise of a jurisdiction, and not merely to *aid* a jurisdiction.

Sparrowe v. *Reed* (1 C. C. Chron. 262).

Only one case of *mandamus* has yet come from the County Courts. It is that of *Sparrowe* v. *Reed* (1 C. C. Chron. 262), and which, although the point intended to be raised was not decided, will serve to illustrate the manner in which the writ of *mandamus* may be used in the practice of the County Courts. The case is as follows:

Hugh Hill moved for a rule for a *mandamus*, commanding the Judge of the County Court of Sussex (Brighton) to give effect to his judgment of the 18th of October, 1847. It appeared that in October last the plaintiff entered his plaint for 20*l.*, and that on the 12th of November the case came on for hearing before the Judge (no notice having been given for a jury); upon the hearing, the Judge made his order in favour of the plaintiff, and adjudged that he should recover 20*l.* for his debt, together with 4*l.* 2*s.* 6*d.* costs. Upon a subsequent day in the same month the defendant applied for a new trial, and at the same time requested that the case might be tried by a jury: this application, in both particulars, was resisted by the plaintiff, but the Judge made an order that judgment and all subsequent proceedings should be set aside, and a new trial had, on condition that the defendant should pay the plaintiff the costs of the application, &c.; and he further ordered that the cause should be tried by a jury. The cause accordingly came on again for trial on the 10th of last December, when the jury found a verdict for the defendant. It was now objected that the Judge had no power to order the

cause to be tried by a jury in the manner that he had, and that the second trial accordingly was *coram non judice;* for that rule 20 (founded upon sect. 70 of the 9 & 10 Vict. c. 95), which regulates the practice as to obtaining a jury, directs that "every notice of a demand of a jury, where the debt or demand claimed shall exceed 5*l.*, must be made in writing to the Clerk of the Court two clear days before the return of the summons," and that the Judge himself had no power to grant a jury, which can be obtained only in the manner pointed out by the foregoing section and rule ; and the 89th section, giving the Judge power to grant a new trial, "to be had upon such terms as he shall think reasonable," not extending to enable him to grant a jury.

Sparrowe v. *Reed* (1 C. C. Chron. 262).

Coleridge, J.—Did the plaintiff go to the second trial?

H. Hill.—He did; but he would not deprive himself of his right to object from having done so.

Coleridge, J.—Did he receive the costs as provided for by the Judge's order ?

H. Hill.—He did ; and it will be a question, certainly, whether, by accepting a partial benefit under the order, he can be heard to object to it.

Coleridge, J.—The point intended to be raised by this motion is a very proper and important one ; but I think, in this particular case I ought not to grant a rule, if it appears that the plaintiff has acquiesced in the order. If he had merely gone to trial and no more, I think there would have been nothing to have prevented his making this motion, as he was to a certain extent bound to have attended the trial ; but he was not bound to take the costs, which he has done, and by doing which I think he has precluded himself from taking this objection. I think, therefore, there should be no rule.

Here, acquiescence in the arrangement deprived the party of his remedy, and so it will be in all cases. By making terms you waive objections, for you submit to the irregularity, and cannot afterwards repudiate it because it did not prove advantageous.

312. *To what Court Mandamus lies.*—The writ of *mandamus* is issued only by the Court of Queen's Bench.

To what Court it lies.

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How obtained.

313. *How obtained.*—It is obtained by motion founded on affidavits. The rule in most cases is, in the first instance, to show cause, but there are cases, not necessary to be specified here, in which, under peculiar circumstances, the Court will make the rule absolute in the first instance.

Demand and refusal.

314. *Demand and Refusal.*—It is an imperative rule that, previously to applying to the Court for a *mandamus* to command the performance of any particular act, an express and distinct *demand* or *request* to perform it must have been made by the prosecutor to the defendant, who must have *refused* to comply with such demand, either in direct terms, or by conduct from which a *refusal* can be conclusively implied; it being due to the defendant to have the option of either doing, or refusing to do, that which is required of him, before an application shall be made to the Court for the purpose of compelling him. Both the demand and the refusal must also be shown on the affidavits made use of in support of the application for the rule.

The demand.

The demand may be made by the prosecutor personally, or by some one duly authorized. It must be made to those *personally* from whom the duty, &c. is required. It must be *express* and *distinct*, and *not* couched in *general* terms, and accurately demand the performance of that which the defendant legally can and should do: (*R.* v. *Frost*, 8 Ad. & El. 823; *R.* v. *Kendall*, 1 Q. B. 366; *R.* v. *Ford*, 2 Ad. & El. 588.) A demand in the alternative, to do one of two, three, or more things will, if the duty enjoined form one of them, and there has been a general refusal to comply with such demand, be sufficient: (*R.* v. *St. Margaret's Parish*, 1 P. & D. 116.) In some cases, as on an application to inspect documents, &c. the object of the demand should be stated, in order that defendant may see the propriety of the prosecutor's purpose, and that such inspection, &c. has a proper and definite object, and not the gratification of mere curiosity: (*R.* v. *Wiltshire Canal*, 3 Ad. & El. 483; *R.* v. *Clear*, 4 B. & C. 899.) And the affidavits must show that the demand was properly made.

Form of refusal.

As for the form of refusal, it is not necessary that it should be in words, but there should be enough shown of the language or conduct of the defendant

from which the Court may reasonably infer a distinct determination not to do what is required: (*R.* v. *Brecknock Canal*, 3 Ad. & El. 217.) Thus, where defendant said "he would do the works *if indemnified*," it was held not to amount to a positive refusal: (*R.* v. *Wiltshire Canal*, 3 Ad. & El. 483.) So, the fact of taking reasonable time to consider does not amount to a refusal, for in such case the prosecutor should apply again: (*R.* v. *Kendall*, 1 Q. B. 366.) But, if it be clear from *the acts* of the defendant that he does not intend to comply with the demand, a statement of the facts upon which such supposition is based will be considered as tantamount to a refusal: (*R.* v. *Birmingham Canal*, 2 W. Black. 708.) So, a colourable adjournment or procrastination of the performance of the act for the purpose of delay is equivalent to a refusal, and the Court will award the *mandamus:* (*R.* v. *St. Margaret*, 1 P. & D. 116.) The refusal must be made by those properly called upon to do the act and it must clearly appear in the affidavits, in order that the Court may judge of its sufficiency; but the reasons or grounds of the refusal need not be stated; it is sufficient to state the fact of refusal, if express, or, if inferential, the facts from which such refusal is inferred: (*Tap. on Mand.* 282—7.)

By whom application to be made.

315. *By whom Application to be made.*—The application for the rule must be made by him (or them) who has the immediate right to the subject-matter of the writ; therefore, it will be dismissed if made by those who have but a remote interest in the subject. It must be made against all the parties, if more than one, whose duty it will be to execute it, if it issue, and within a reasonable time after the default, neglect of duty, &c. complained of: (*Tap. on Mand.* 291.)

Affidavit.

316. *The Affidavits.*—The affidavits should plainly state in what official capacity, if any, it is intended the writ should issue against the defendants: (*Papillon's case*, Skin. 64.) They should set forth all the facts of the case, that the Court may see that prosecutor is entitled to his writ (*R.* v. *Justices of King's Lynn*, 3 B. & C. 147); and the duty which has been neglected or omitted; for if the affidavits do not disclose a probable cause or necessity for the writ, the Court will dismiss the application. The prosecutor must in

his affidavits show his title to the writ, and support his case with the best evidence in his power; that an injustice has been done to him; that he has complied with all the requisite preliminaries necessary to the obtaining of the writ; the Court's jurisdiction over the subject-matter of the application; that he has no specific legal remedy, and that there has been (if necessary) a demand and refusal previous to making the application: (*Tap. on Mand.* 233—4.)

Subsequent proceedings.

317. *Subsequent Proceedings.*—The proceedings in the Court above do not properly belong to a treatise on the County Courts. We, therefore, quit the subject at the point at which the practitioner in the County Court will transfer it to his London agent, and recommend him to resort for further information to the volume to which we have been indebted for much of the contents of this chapter, *Mr. Tapping's Treatise on the Law and Practice of the Writ of Mandamus.*

CAP. II.

PROHIBITION.

What is prohibition.

The writ of prohibition is the remedy for the opposite wrong to that which is provided for by the writ of *mandamus*.

Mandamus is a command *to do* an act which the Superior Court, as representing the Queen, is of opinion that an Inferior Court, or corporate body, or public officer is bound to do. *Prohibition* is a command *not* to do some act which is not within the jurisdiction or authority of such Inferior Court.

Prohibition is a writ issuing properly only out of the Court of Queen's Bench (*Company of Furriers*, 2 Roll. Rep. 471); but for the furtherance of justice it may now also be had in some cases out of the Court of Chancery, Common Pleas, or Exchequer (*Hutton's case*, Hob. 27; *Tucker* v. *Tucker*, 1 Man. & G. 1074), directed to the Judge and parties of a suit in any Inferior Court, commanding them to cease from the prosecution thereof, upon a surmise either that this cause originally, or some collateral matter arising therein, does not belong to that jurisdiction, but to the cognizance of some other Court. This writ may issue either to Inferior Courts of Common Law, as to the Courts of the Counties Palatine, if they hold plea of land or other matters not lying within their respective franchises; to the County Courts or Courts Baron, where they attempt to hold plea of any matter of a value beyond what can be sued for therein (Finch L. 451); or it may be directed to the Courts Christian, the University Courts, the Court of Chivalry, or the Court of Admiralty, when they concern themselves with any matter not within their jurisdiction, as if the first should attempt to try the validity of a custom pleaded (*Vanaire* v. *Spleen*, Carth. 33), or the latter a contract made or to be executed within this kingdom. Or if, on handling of matters clearly within their cognizance, they transgress the bounds prescribed to them by the laws of England, as, where

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they require two witnesses to prove the payment of a legacy, a release of tithes (*Mallary* v. *Marriott*, Cro. Eliz. 667; Hob. 188), or the like: in such cases, also, prohibition will be awarded. But a prohibition will not be awarded in reference to a mere point of *practice*, where the Court has jurisdiction in the general subject of the cause: (*Ex parte Smith*, 1 Tyr. & G. 227; *Jolly* v. *Baires*, 12 Ad. & E. 201). * * * And if the Judge or the party shall proceed after such prohibition, an attachment may be had against them to punish them for the contempt, at the discretion of the Court that awarded it; and an action will lie against them, to repair the party injured in damages: (2 Inst. 601.) The reasons for granting, and the methods of proceeding upon, prohibitions are to be found at length in the answers signed by all the Judges to the exhibition of certain articles of complaint to the king by Archbishop Bancroft, in the 3rd year of James I., on behalf of the Ecclesiastical Courts: (3 Steph. Com. 667—8.)

In what cases it will be granted.

318. *In what Cases Prohibition will be granted.*—Prohibition is the process by which an Inferior Court is restrained from exceeding its jurisdiction: if it hold plea of a matter out of the limits of its jurisdiction (2 Rob. 317): if the cause does not appear to be within its jurisdiction (*Ibid.* 281); *if an action in an Inferior Court be founded upon a judgment in B. R. or C. B.* (1 Rob. 54). The old reports teem with decisions upon prohibitions to the Ecclesiastical Courts during the period when there was a manifest struggle for ascendancy between them and the Temporal Courts. These are for the most part inapplicable to the question we have now alone to consider, namely. in what cases a prohibition will be granted to restrain a Judge of the County Court.

When granted to a County Court.

It may be laid down broadly that a prohibition will be granted in every case in which the County Court exceeds its jurisdiction, so long as the matter is under its control, for, as it will be seen presently, after execution had and the proceeds paid over, a prohibition will be refused, because there is nothing to prohibit.

And a prohibition is granted as well where an Inferior Court has a jurisdiction and has exceeded it, as where it has no jurisdiction at all: (*Smith* v. *Bradley*, Bull. N. P. 219.) In *Butterworth* v. *Walker*

(3 Burr. 1689), Lord MANSFIELD, C. J. said, that to found a prohibition the matter must be material. In *Smart* v. *Wolf* (3 T. R. 347), it was observed by ASHURST, J. that "in prohibition the question is, *whether the Court has a jurisdiction*, and not whether the jurisdiction is observed in a formal and regular way." So it was laid down by BULLER, J., in *Lord Camden* v. *Horne* (4 T. R. 397), that if the Court below have jurisdiction *over the subject*, a mistake in their judgment is no ground for a prohibition." And from *Darby* v. *Cosens* (1 T. R. 552), *semble*, that if an Inferior Court adjudge generally that a plea which ousts them of their jurisdiction is insufficient, it will be presumed that the judgment proceeded, not upon a warrant of form, but upon the merits of the plea, and therefore prohibition will be granted. But it was decided in *Horne* v. *Lord Camden* (2 H. Bl. 553), that even if a misconstruction of an Act of Parliament was ground for a prohibition, and not mere matter for an appeal, it will not be granted, unless it be made to appear by the party applying, that he insisted below on an opposite construction. And where the subject of a suit in the Inferior Court is within the jurisdiction of that Court, though in the proceedings a matter be started which is out of its jurisdiction, yet, unless it is going on to try such matter, a prohibition will not lie: (*Duttens* v. *Robson*, 1 H. Bl. 100.)

The question to be determined in prohibition.

The question, on an application for a prohibition, must always resolve itself into this; has the Judge exceeded his jurisdiction? To ascertain this, it is necessary to see precisely what are the limits of that jurisdiction, and for that purpose the preceding divisions of this treatise must be consulted, according to the particular in which that jurisdiction is supposed to have been exceeded, whether as to time, place, person, or authority.

What gives jurisdiction to the County Courts.

But, before we collect the cases that have been already decided as to prohibitions to the County Courts, we may note a point which is yet undecided, but upon which many other questions must turn, namely, what it is that gives jurisdiction to the County Court, and at what point does it commence; is it the existence of the subject-matter, or is it the act of the plaintiff in entering his plaint, and thereby placing both himself and the subject-matter under the jurisdiction, and does the jurisdiction over the defendant

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begin with the existence of the subject-matter, or the entry of the plaint, or the service of the summons?

Lewis v. Hance (1 Cox & Macrae, 75).

In *Lewis* v. *Hance* (1 Cox & Macrae, 75), the judgment proceeded on the assumption that the jurisdiction commenced with the entry of the plaint, so far at least as respects the plaint and the subject-matter; for the argument there was, that an attorney plaintiff, never being within the jurisdiction, could not be deprived of his privilege by words that merely enacted that no privilege should prevail against the jurisdiction.

Zohrab v. Smith (1 Cox & Macrae, 106).

In *Zohrab* v. *Smith* (1 Cox & Macrae, 106), Coleridge, J., said, "But when I argue as though it were necessary to originate jurisdiction that this proof (*i. e.* of service of summons) should be given, I by no means wish it to be understood that such is my own opinion, for I should say that it is *entirely the other way*, and that if *the cause* is within the jurisdiction of the Court, this (rule 11) is merely a rule to direct the Judge in the exercise of that jurisdiction. It may be compared to a notice of trial. If no notice of trial had been given in an action in one of the Superior Courts, it would certainly be a ground for a new trial, but such notice could not be necessary to give jurisdiction to try."

Perhaps these apparently conflictory views may be reconciled by distinguishing the cases of a plaintiff and a defendant.

Jurisdiction as to plaintiff.

The position of the case is thus. There is a cause of action, over which two Courts have jurisdiction, namely, the Superior Court and the County Court. As respects the plaintiff, it is at his option under which jurisdiction he will place himself, and the moment he has determined, by entering his plaint in the County Court, but not before, *he* becomes subject to its jurisdiction as well as the cause of action, and from that moment there is no appeal from any judgment or proceeding of the Inferior Court, however erroneous, if it keep within that jurisdiction.

Jurisdiction as to defendant.

The moment when a defendant comes within the jurisdiction is more difficult to determine. Is it from the moment of the existence of the cause of action, or from the entry of the plaint, or the service of the summons?

The cases of *Robinson* v. *Lenaghan* (1 Cox & Macrae, 97), and *Zohrab* v. *Smith* (1 Cox & Macrae, 106),

clearly determine that it is not from the service of the summons, for they have held that it is entirely for the discretion of the Judge of the County Court what he shall deem sufficient service. It can scarcely be from the existence of the cause of action, because there are many cases in which it is optional with the plaintiff whom he shall make defendant. It must, therefore, be from the *entry of the plaint*, which *fixes* the defendant, and notifies, as it were, to the Court, the existence of the cause of action, and calls upon it to exercise its jurisdiction over the party or parties thus indicated. If so it be, the Superior Courts will see that the party thus notified is one over whom the County Court has jurisdiction for the cause stated in the plaint, and if of opinion that it has not, will grant a prohibition. But if the party is within the jurisdiction of the County Court, the Superior Court will not interfere or revise the decision, however erroneous, of the County Court on any matter within its jurisdiction to decide.

Jurisdiction as to cause of action.

As to the *cause of action*, that is within the jurisdiction of the County Court from the moment of its existence, according to the view of COLERIDGE, J., in *Zohrab* v. *Smith* (1 Cox & Macrae, 106). Hence, in relation to that, the Superior Court will only inquire whether it be a cause of action within the jurisdiction of the County Court. If of opinion that it is, it will not interfere further with the manner of dealing with it by the County Court, provided the latter do not exceed its jurisdiction in such dealing: if of opinion that it is not, a prohibition will be granted to restrain any further proceeding.

Definition of the jurisdiction.

It must be understood that this attempt to define the boundaries of jurisdiction in the County Courts, as the test by which it must be determined whether prohibition will or will not issue in any case, is nothing more than a suggestion of the writer of this treatise, which he submits with great deference to the consideration of the professional reader. It is not offered as a positive authority because he has been unable to find in any of the books any *express* decisions of the Courts, or any definitions of text writers, from which he could, with certainty, trace the boundary of the jurisdiction of an Inferior Court, or the principles that govern the writ of prohibition; and, in default of authority, he has ventured a definition of his own, which he

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hopes may in some measure aid the practitioner in the solution of the numerous and very difficult questions that are now continually arising out of the County Courts, and in which he has to determine whether there exists for him an appeal in the form of an application for a writ of prohibition.

To assist him in his research, we string together the cases already decided, grouping separately those in which the writ was granted, and those in which it was refused.

Where prohibition has been granted against the County Courts.

Jones v. Jones and anor. (1 Cox & Macrae, 92).

319. *Cases in which Prohibition has been granted against the County Courts.*—The first reported case is that of *Jones* v. *Jones and anor.* (1 Cox & Macrae, 92), in which it was held that a Judge having come to a decision at the hearing, and that decision being recorded, it was not competent to him to alter such decision, except during the sitting of the Court. The facts were, that after a judgment given, and recorded by the Clerk in the register, the Judge, after the parties had left the Court, rescinded that decision, adjourned the matter to the next following Court, and gave notice to the parties that he had done so, requesting them to attend accordingly. The defendants attended and protested against the further hearing, on the ground that the case had been already decided in their favour. The Judge, however, proceeded and reversed his former decision. On behalf of the defendant it was sworn, that he believed the first judgment so given and rescinded was not rescinded on the same day, or at the same Court, but subsequently, and this was not expressly denied by affidavit, but only the register was produced in which it appeared to have been done on the same day. But it was held by COLERIDGE, J., in the Bail Court, that in default of an answer by affidavit to the affidavit on the other side, it must be presumed that the alteration was *not* made during the sitting of the Court, and prohibition was granted accordingly. COLERIDGE, J., said, "I am of opinion this rule should be made absolute, *not* on the ground of an improper exercise of the *discretion* of the Judge, *because on that I should have no right to interfere*, but on the ground that he has *exceeded his jurisdiction*."

Grimbley v. Aykroyd (1 Cox & Macrae, 79).

In *Grimbley* v. *Aykroyd* (1 Cox & Macrae, 79), prohibition was granted because the plaintiff had im-

properly divided his "cause of action" so as to bring several plaints in the County Court for that which was held by the Court of Exchequer to be one "cause of action" within the meaning of the 63rd section of the County Courts Act, and the ground of such prohibition was, that in this the Court had exceeded its authority, which was, by that section, restrained from having jurisdiction over demands above 20*l.* by the contrivance of splitting them.

Ackworth v. *Dowsett* (1 Cox & Macrae, 118).

In the case of *Ackworth and anor.* v. *Dowsett* (1 Cox & Macrae, 118), where a plaintiff had split his demand, and obtained judgment in two actions for the same "cause of action," and it appeared, from the particulars of demand annexed, that two plaints had been entered, on the same day, by the same plaintiff, against the same defendant, for goods sold and delivered, it was held by the Court of Queen's Bench that this was a sufficient impropriety upon the face of the proceedings to enable it to issue a prohibition against proceeding with the second action. It was held also, in the same case, that prohibition may issue after judgment and execution levied but not satisfied.

Where prohibition has been refused to the County Court.

Toft v. *Rainer* (1 Cox & Macrae, 39).

320. *Cases in which Prohibition has been refused against the County Courts.*—In the case of *Toft* v. *Rainer* (1 Cox & Macrae, 39), the Court of Common Pleas held that it could not interfere by prohibition with the proceedings of a County Court *upon a suggestion that the Judge has wrongly decided a question of law which was within his jurisdiction.* It was argued that the case was like those in the Spiritual Courts, with which the Courts of Common Law were accustomed to interfere, not only when they entertain matters altogether foreign to their jurisdiction, but also when they put a wrong construction or interpretation upon the Common or Statute Law, or require unnecessary proof. But the Court was unanimously of opinion that they had no such power in the case of the County Courts, for the reasons stated in their judgment, which we give entire, as the best definition yet produced from authority as to the jurisdiction of the County Courts.

WILDE, C. J.—There is no point in which it can be said that the Judge of the local Court had not jurisdiction. When

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the plea was pleaded, he had power to decide whether the plea was good or bad. It was a matter within his jurisdiction, and he was compelled to decide upon the validity of the plea. In ordinary cases, if the Judge of an Inferior Court come to a wrong decision, a writ of error may be brought. In this case the power to bring a writ of error is taken away by the statute regulating the Courts. There is no ground for supposing that in the present case there is a remedy by writ of prohibition.

Coltman, J.—The cases in the Spiritual Courts are in no respect parallel. The Judges there are not Judges of the Common Law. The Judges of the new County Courts are so.

Maule, J.—This would be a case for a writ of error if the writ of error were not taken away by the statute. Then we cannot circuitously give the defendant the benefit of a writ of error which the Act of Parliament says he is not to have.

Williams, J.—This application is founded upon nothing more nor less than a suggestion that the Judge of the County Court was wrong in a point of law. If we were to grant it, we ought, whenever one of these Judges is wrong in a point of law, to issue a prohibition. I am not satisfied that the Judge made any mistake at all; but whether he made a great or a small mistake, or none, the matter was within his jurisdiction, and he was competent to decide it.

Wickham v. *Lee* (1 Cox & Macrae, 119).

In the case of *Wickham* v. *Lee* (1 Cox & Macrae, 119), where a plaintiff had entered two plaints, one for a year's rent, and another for double value for holding over after the expiration of the notice to quit, it was held, by the Court of Queen's Bench, that these were separate causes of action, and might be sued for separately, and that less than 20*l.* being claimed for each, the County Court had jurisdiction. It was also held that an action for double value under stat. 4 Geo. 2, c. 28, s. 1, was within the jurisdiction of the County Court, and a prohibition was refused.

Hartley v. *Ayurst* (1 Cox & Macrae, 109).

So, in the case of *Hartley* v. *Ayurst* (1 Cox & Macrae, 109), it was held by the Court of Queen's Bench that it was no ground for prohibition that the plaintiff had divided his cause of action, where one plaint was on tort for an assault, and the other for the expenses of a surgeon's bill incurred by reason of such assault.

Lloyd v. *Jones* (1 Cox & Macrae, 111).

In *Lloyd* v. *Jones* (1 Cox & Macrae, 111), it was

held, by the Court of Common Pleas, that the jurisdiction of the County Court to try an action of trespass is not ousted by a plea that defendant committed the supposed trespass in order to raise a question of title, and in the exercise of a right he possessed by immemorial custom, unless the Judge is satisfied, upon hearing the facts, that title is *substantially* disputed, and inasmuch as in this case the right of fishing claimed by the defendant was not an incorporeal hereditament at all, the case was within the jurisdiction of the Court, and the prohibition prayed for was refused.

Lilley v. *Harvey* (1 Cox & Macrae, 115).

So, in the case of *Lilley* v. *Harvey* (1 Cox & Macrae, 115), it was held by WIGHTMAN, J., in the Bail Court, that to oust the jurisdiction of the Judge of the County Court to try a cause, on the ground of title in dispute, under the proviso of sect. 58 of the County Courts Act, such plea must be *bonâ fide*, and that it is competent to the Judge to hear the case in order to determine whether it be really within the proviso, the mere assertion of the defendant not being sufficient to oust jurisdiction. If then the Judge determines that he has jurisdiction and proceeds to hear and adjudge, the Superior Court will review his decision as to the fact whether title was really in dispute or not, and, if he have decided wrongly upon that, a prohibition will be granted.

Robinson v. *Lenaghan* (1 Cox & Macrae, 97).

In *Robinson* v. *Lenaghan* (1 Cox and Macrae, 97), where the summons had never been served, and in defendant's absence judgment was obtained and execution issued and levied, the Court of Exchequer refused a prohibition on two grounds; 1st, because it was entirely in the discretion of the Judge of the County Court to determine what he should deem sufficient proof of service of summons, the service of the summons not being, as it was contended for the defendant, the foundation of the jurisdiction: and, 2nd, that a prohibition would not issue after execution levied in the Court below, there being, in fact, nothing to prohibit.

Zohrab v. *Smith* (1 Cox & Macrae, 106).

And so it was held in the Bail Court, by COLERIDGE, J., in the case of *Zohrab* v. *Smith* (1 Cox & Macrae, 106), in which a prohibition was prayed because the summons had not been properly served. But that learned Judge remarked in his judgment, refusing the application, that "a writ of prohibition

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never issues merely because a step taken in a Court below may have been unwise or unjust, nor because we may think a decision unsatisfactory, but only *because we find that the Court has exceeded, or is about to exceed, its jurisdiction.*" After some remarks upon the proof of service in the particular case, he continues, "But when I argue as though it were necessary to originate jurisdiction that this proof should be given, I by no means wish it to be understood that such is my own opinion, for I should say that it is entirely the other way, and that if the *cause* is within the jurisdiction of the Court, this (rule 11) is merely a rule to direct the Judge in the *exercise of his jurisdiction.*"

Foster v. *Temple* (1 C. C. Chron. 277).

In *Foster and anor.* v. *Temple* (1 C. C. Chron. 277), where a summons had been dismissed upon the ground of a variance from the plaint, and a fresh summons had been directed by the Judge to issue upon the original plaint, dated as of the day on which the plaint was entered; it was held by the Court of Queen's Bench that it was competent to the Judge to do so, that he was acting within his jurisdiction, and a prohibition was refused.

Waters v. *Handley* (1 C. C. Chon. 279).

In the case of *Waters* v. *Handley* (1 C. C. Chron. 279), it was held, by the Court of Common Pleas, that the County Court has jurisdiction over bills of exchange; that it could not review the decision of the Judge as to the due service of the summons, and that it would not interfere by prohibition, because the summons, having been obtained by leave of the Court for the district in which the defendant dwelt or carried on his business within six months next before action brought or in which the cause of action arose, did not, on the face of it, show that it had been obtained by leave of such Court.

Crowe v. *Hunt* (1 C. C. Chron. 282).

In *Crowe* v. *Hunt* (1 C. C. Chron. 282), in the Bail Court, where defendant was sued in the County Court for the recovery of a tenement, and at the trial the Judge nonsuited the plaintiff, with leave to move at the next Court to set aside the nonsuit, no leave being reserved to enter a verdict for the plaintiff, and in due time, before the next court-day, the defendant received a notice through the post that the plaintiff would apply to set aside the nonsuit and enter a verdict for the plaintiff, and the defendant did not attend, and afterwards he received notice that the

Court had set aside the nonsuit and entered a verdict for the plaintiff, it was held, by WIGHTMAN, J., that, as the defendant admitted having received the notice of motion in the County Court in due time, he ought to have attended and opposed it, and that, not having done so, he was not entitled to lie by and then come for a prohibition.

Ackworth v. Dowsett (1 Cox & Macrae, 118).

And in *Ackworth* v. *Dowsett* (1 Cox & Macrae, 118), it was held by the Court of Queen's Bench, that prohibition will not issue after judgment and execution, where the defect does not appear on the face of the proceedings.

Fearon v. Norval (1 Cox & Macrae, 127).

In the case of *Fearon* v. *Norval* (1 Cox & Macrae, 127), a prohibition was prayed on two grounds; first, that the Judge had no jurisdiction to proceed under section 122, which enacts that "if the tenant or occupier shall not thereupon appear at the time and place appointed and *show cause to the contrary*," the Court may proceed to give possession to the landlord of the tenement claimed. It had been contended that it would suffice, to oust the jurisdiction, that *any* cause be shown. But ERLE, J., in giving the judgment of the Court, said, "In my opinion those words require the tenant to show such cause as constitutes, in the opinion of the Judge, a defence." "The second ground was, that the notice to quit, proved by the defendant, did not determine the tenancy; that the Judge had no jurisdiction unless the tenancy was determined by a legal notice to quit." "It is unnecessary to say whether the Judge's decision on the fact was right, because it is clear he had jurisdiction over the question of fact, and that it was his duty to commence this inquiry. I think his decision is now conclusive." And the rule for a prohibition was discharged.

By whom it may be granted.

321. *By whom Prohibition may be granted.*—All the Superior Courts of Westminster may award prohibition, by virtue of their superior intendency over all Inferior Courts. The Court of Chancery may also award a prohibition, which may issue as well in vacation as in term time; but the writ is returnable into the Queen's Bench or Common Pleas.

Who may sue.

322. *Who may sue.*—If an Inferior Court will hold plea of any matter which belongs not to its jurisdiction, upon information thereof to the Queen's Court,

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Cap. 2. *Prohibition.*

either by *plaintiff*, *defendant*, or by a mere *stranger*, a prohibition will issue.

Practice of prohibition.

323. *The Practice of Prohibition.*—Formerly the practice was for the party aggrieved in the Court below to enter a *suggestion* on the record of the Superior Court, stating formally what had been done in the Inferior Court, setting forth his cause of complaint and the nature of it, in being drawn *ad aliud examen* by a jurisdiction or manner of process disallowed by the laws of the kingdom.

But the practice in prohibition is now regulated by stat. 1 Will. 4, c. 21, intituled, "An Act to improve the Proceedings in Prohibition and Mandamus," the first section of which thus enacts :

1 W. 4, c. 21. *Section* 1.

Sect. 1. Whereas the filing a suggestion of record on application for a writ of prohibition is productive of unnecessary expense, and the allegation of contempt in a declaration in prohibition filed before writ issued is an unnecessary form; and it is expedient to make some better provision for payment of costs in cases of prohibition; be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that it shall not be necessary to file a suggestion on any application for a writ of prohibition, but such application may be made on affidavits only; and in case the party applying shall be directed to declare in prohibition before writ issued, such declaration shall be expressed to be on behalf of such party only, and not, as heretofore, on the behalf of the party and of His Majesty, and shall contain and set forth in a concise manner so much only of the proceeding in the Court below as may be necessary to show the ground of the application, without alleging the delivery of a writ or any contempt, and shall conclude by praying that a writ of prohibition may issue; to which declaration the party defendant may demur, or plead such matters, by way of traverse or otherwise, as may be proper to show that the writ ought not to issue, and conclude by praying that such writ may not issue; and judgment shall be given, that the writ of prohibition do or do not issue, as justice may require; and the party in whose favour judgment shall be given, whether on nonsuit, verdict, demurrer, or otherwise, shall be entitled to the

Applications for writs of prohibitions may be made on affidavit only.

Contents of declaration in case the party is directed to declare in prohibition.

Defendant may demur to declaration.

Judgment.

Costs.

costs attending the application and subsequent proceedings, and have judgment to recover the same; and in case a verdict shall be given for the party plaintiff, in such declaration, it shall be lawful for the jury to assess damages, for which judgment shall also be given, but such assessment shall not be necessary to entitle the plaintiff to costs. Damages.

324. *Affidavit.*—The affidavit should state explicitly, but, as the statute directs, concisely, the facts upon which the application is grounded, and conclude by praying that a writ of prohibition may issue. Affidavit.

325. *The Application.*—This is in the form of an ordinary motion and in the first instance it is for a rule *nisi*. If no cause be shown, or if, upon the argument, the Court is of opinion that prohibition ought to go, the rule is made absolute, and the writ immediately issues, commanding the Judge not to hold, and the party not to prosecute, the plea. But sometimes the point is too doubtful or difficult to be thus summarily disposed of upon a motion, and in such a case, for the more solemn determination of the question, the party applying for the prohibition is directed by the Court to *declare* in prohibition, that is, to deliver a declaration against the other, setting forth, in a concise manner, so much of the proceeding in the Court below as may be necessary to show the ground of the application, and praying that a writ of prohibition may issue: (1 Will. 4, c. 21, s. 1.) The application.

326. *Plea and demurrer.*—To this declaration the party defendant may demur, or plead such matters, by way of traverse or otherwise, as may go to show that the writ ought not to issue, and conclude by praying that such writ may not issue: (1 Will. 4, c. 21, s. 1.) Plea and demurrer.

327. *Judgment.*—Thereupon the case is heard in solemn argument, and judgment given that the writ of prohibition do or do not issue, as justice may require: (1 Will. 4, c. 21, s. 1.) Judgment.

328. *Damages and Costs.*—The party in whose favour judgment is given, whether on nonsuit, verdict, demurrer, or otherwise, is to be entitled to the costs of attending the application, and subsequent proceedings, and have judgment to recover the same, and in case Damages and costs.

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a verdict be given for the party plaintiff in such declaration, it shall be lawful for the jury to assess damages, for which judgment shall also be given; but such assessment shall not be necessary to entitle the plaintiff to costs: (1 Will. 4, c. 21, s. 1.)

"The effect," says Mr. Serjeant Stephen, in his *Commentaries* (vol. 3, p. 669), "of the legislative provisions here cited, has conseqently been to place prohibitions, after a rule to declare has been obtained, upon a footing substantially of an action, and in this respect it exhibits, we see, a close resemblance to a *mandamus*."

328*a*. *Prohibition may issue in Vacation*.—Formerly a prohibition could not be obtained in term time, and on application to the Court, but that inconvenience has been remedied by 13 & 14 Vict. c. 61, s. 22. Thus:

13 & 14 Vict. c. 61, s. 22.

Sect. 22. And be it enacted, that it shall be lawful for any Judge of any of Her Majesty's Superior Courts of Common Law at Westminster, as well in term time as in vacation, to hear and determine applications for writs of prohibition directed to the Judges of the said County Courts, and to make such rules or orders for the issuing of such writs as might have been made by the court, and all such rules or orders so made by any such judge shall have the same force and effect as rules of court for such purposes now have, and such writs shall be issued by virtue of such rules or orders as well in term time as in vacation: provided always, that any rule or order made by any such judge, or any writ issued by virtue thereof, may be discharged or varied or set aside by the court, on application made thereto by any party dissatisfied with such rule or order.

A writ of prohibition issued *ex parte* from the Petty Bag Office, and setting forth no grounds for prohibiting the proceedings, is void, and will be set aside on motion: *Stilt* v. *Booth* (3 C. C. Ch. 173.) But if it appears on the face of it to be regular, and contains a good ground for prohibition, it will not be set aside: *Swain* v. *Cox* (3 C. C. Chron. 174.)

CAP. III.

CERTIORARI.

Certiorari, from the name given to the writ, is the process by which a cause is brought up from an Inferior Court of Record to the Superior Court, in order to remove it into the jurisdiction of the latter, that the party may have more sure or speedy justice. Its object is to give relief from some inconvenience supposed in some particular case to arise from a cause being allowed to proceed to trial before an inferior jurisdiction, less capable than the Superior Court of rendering complete and effectual justice.

BOOK V. APPEAL TO SUPERIOR COURTS.

Cap. 3. Certiorari.

What is *certiorari*.

It is a general rule that a *certiorari* will *not* lie to remove a cause from an Inferior Court after *judgment*: (*Walker* v. *Gann*, 7 D. & R. 769.)

At Common Law this writ is an unrestricted privilege of the Superior Court. But the County Courts Act has expressly taken away the power of issuing it in actions in which the debt or damage claimed does not exceed 5*l.* In all actions in the County Court where more than 5*l.* are claimed, if the defendant deems it to involve questions that may be better determined by the Superior Court, and especially points of law, upon which the opinion of a Court of Error may be ultimately required, he may apply to a Judge of one of the Superior Courts for a *certiorari*.

329. *Removal of Plaints from the County Court.*— It is provided, by sect. 90, as follows:

Removal of plaints from the County Court.

Section 90.

Sect. 90. And be it enacted, that no plaint entered in any Court holden under this Act shall be removed or removable from the said Court into any of Her Majesty's Superior Courts of Record by any writ or process, unless the debt or damage claimed shall exceed five pounds, and then only by leave of a Judge of one of the said Superior Courts, in cases which shall appear to the Judge fit to be tried in one of the Superior Courts, and upon such terms as to payment of costs, giving security for debt or costs, or such other terms as he shall think fit.

No actions to be removed into Superior Courts but on certain conditions.

This is, in fact, only the re-enactment of statute 21 Jac. 1, c. 23, ss. 4, 6, which provides that if the

APPEAL TO SUPERIOR COURTS. — *Cap.* 3. *Certiorari.* — 21 Jac. 1, c. 23, ss. 4, 6.

of three years' standing, and the debt or damages laid or thereby demanded in the declaration do not amount to 5*l.*, the cause shall not be removed.

The process by which this is effected will be by writ of *certiorari*, the right to issue which is thus limited by the statute to

Plaints in which the debt or damage *claimed* shall exceed 5*l.*, and then only

By leave of *a* Judge of one of the Superior Courts, and

Upon such terms as he shall think fit to impose.

Removal of actions of replevin.

330. *Removal of Actions of Replevin.*—By sect. 121 power is given to remove actions of replevin into a Superior Court, where *either* party shall *declare to the Court* in which such action shall be brought

1. That *the title* to any corporeal or incorporeal hereditament, or to any toll, market, fair, or franchise is in question.

2. That the rent or damage in respect of which the distress shall have been taken is more than the sum of 20*l.*

3. And shall become bound, with *two* sufficient sureties, to be approved by *the Clerk* of the Court, in such *sums* as to *the Judge* shall seem reasonable, to *prosecute* the suit *with effect*, and *without delay*, and to *prove* before the Court by which such suit shall be tried, that such *title* as aforesaid *is* in dispute between the parties, or that there *was ground for believing* that the said rent or damage was more than 20*l.*

In such case it may be removed before any Court competent to try the same. The section is as follows:

Section 121. — How actions of replevin may be removed.

Sect. 121. And be it enacted, that in case either party to any such action of replevin shall declare to the Court in which such action shall be brought that the title to any corporeal or incorporeal hereditament, or to any toll, market, fair, or franchise, is in question, or that the rent or damage in respect of which the distress shall have been taken is more than the sum of twenty pounds, and shall become bound, with two sufficient sureties, to be approved by the Clerk of the Court, in such sums as to the Judge shall seem reasonable, regard being had to the nature of the claim, and the alleged value or amount of the property in dispute, or of the rent or damage, to prosecute the suit with

effect and without delay, and to prove before the Court by which such suit shall be tried that such title as aforesaid is in dispute between the parties, or that there was ground for believing that the said rent or damage was more than twenty pounds, then, and not otherwise, the action may be removed before any Court competent to try the same in such manner as hath been accustomed.

331. *In what cases Certiorari may be had.*—By leave of a Judge a plaint may be removed *in all cases* in which the debt or damage claimed exceeds 5*l.*, with one remarkable exception. The 65th section of the County Courts Act gives the Court jurisdiction over any demand not exceeding 20*l.* which is the whole or part of the unliquidated balance of a partnership account. In the case of *Durant and others* v. *Tomlin*, in the Queen's Bench (1 Cox & Macrae, 129), which was an application to remove to a Superior Court a plaint entered in the County Court for such an unliquidated balance of a partnership account, it was held that, inasmuch as the Courts of Common Law have not jurisdiction over a partnership account, they could not entertain such a cause if removed, and, therefore, the *certiorari* was refused. And this, even although the defendant offered to undertake to raise no objection to the want of jurisdiction to try.

In what cases *certiorari* may be had.

Durant v. *Tomlin* (1 Cox & Macrae, 129).

But leave to have a *certiorari* will not be given by a Judge in chambers, or by the full Court, as a matter of course; sufficient grounds must be shown for it, and they must be such as will satisfy the Judge or Court that justice is likely to be promoted by the removal of the cause to the Superior Court. The following are the reasons usually admitted as sufficient:

What sufficient cause for removal.

1. That the cause is not likely to have a fair trial owing to local prejudice, interest of the officers, and such like.

2. That it involves difficult questions of law, which will require to be argued by the ablest counsel and decided by the most competent Judges.

3. That although in itself a case of small importance, many other cases depend upon it, and that, therefore, the applicant is entitled to be placed in a position in which he may, if necessary, carry it before the highest tribunal.

What sufficient cause for removal.

4. To these another reason *ought to be* added, in consequence of the decision in *Ex parte Clipperton* (11 Law T. 352; 1 C. C. Chron. 300), that an attorney is in no case to be entitled to more than the fee provided by the Act, whatever the work done; namely, that in the particular case it is necessary, owing to the importance or complication of the matter in issue, to get up evidence and prepare a brief, which the applicant is unable to do without legal assistance, and that he cannot procure legal assistance for the trifling fee limited by the County Courts Act.

In what cases *certiorari* may not be had.

332. *In what cases Certiorari cannot be had.*—It cannot be had when the debt or damage claimed does not exceed 5*l.*, nor after final judgment; and the writ must be delivered to the Court below before any of the jury are sworn, by stat. 42 Eliz. c. 5.

How obtained.

333. *How obtained.*—Where the cause of action does not amount to 20*l.*, exclusive of costs, the cause shall not be removed from an Inferior Court, unless the defendant, with two sufficient securities, enter into a recognizance there in double the amount, conditioned for the payment of the debt or damages and costs, in case judgment shall pass against him: (7 & 8 *Geo.* 4, *c.* 71, *s.* 6; 19 *Geo.* 3, *c.* 70, *s.* 6.) The sum laid in the declaration as the debt or damages, and not the sum actually due, is deemed the amount of the cause of action within the meaning of this statute: (*Attenborough* v. *Hardy*, 2 B & C. 802.)

Symonds v. *Dimsdale* (12 Jur. 485).

And it may be obtained without giving notice to the opposite party of an intention to apply for it: (*Symonds* v. *Dimsdale*, 12 Jur. 485.) The judgment in this case enters so fully into the principles that govern the issuing of *certiorari* that we give it *verbatim*.

POLLOCK, C. B.—We think this rule ought to be discharged. The question turns on the true construction of the 90th section of the County Courts Act, the 9 & 10 Vict. c. 95, by which it is enacted, that "no plaint entered in any Court holden under this Act shall be removed or removable from the said Court into any of Her Majesty's Superior Courts of Record by any writ or process, unless the debt or damages claimed shall exceed 5*l.*, and then only by leave of a Judge of one of the said Superior Courts, in cases which shall appear to the Judge fit to be tried in one of the Superior Courts, and upon such terms as to payment of costs, giving security for debt or costs, or such other terms as he shall think fit:" and the

point is, whether the expression that the cause is only to be removed upon such terms as the judge shall think fit, necessarily imports that he must hear both parties before he issues the writ; and consequently that the defendant ought to have given a notice to the plaintiff of his intended application for the *certiorari*. We are, however, of opinion that the application for that writ is an *ex parte* application, and that there is no necessity for a notice to the opposite party, but that the judge has a perfect right, if he pleases, to issue the writ on an *ex parte* application.

Symonds v. *Dimsdale* (12 Jur. 485)

Generally speaking the writ of *certiorari* is the right of the subject at Common Law, and although that right is taken away in many cases by various Acts of Parliament, and particularly is taken away from large classes of cases where otherwise it might cause injury, we think that the analogy of the Common Law ought to be applied to the present case; and as in other cases where a defendant applies for a *certiorari* the application is made *ex parte*, we think here the authority of the Judge to issue, and, what is perhaps of more importance, the right of the subject to have this writ, ought not to be taken away by an argument arising out of the use by the Legislature of the words "on such terms as to the Judge shall seem fit," and, indeed, ought not to be taken away without either express words or words clearly to that effect.

As to the imposing terms on the parties applying for these writs, we think that what was suggested yesterday in the argument is just, namely, that the intention of the Legislature was not to fetter, but rather to enlarge, the authority of the Judge, *i. e.* while permitting him to issue the writ *ex parte*, to enable him to fetter it by such terms as the nature of the case or the practice of the Courts (where any practice exists on the subject) may render proper. Thus, where such an application is made *ex parte*, the Judge would naturally inquire when the plaint was entered, and if it appeared that it had been entered some time back, and that the *certiorari* would prevent the plaintiff from having his execution for a considerable period, the Judge, while directing the writ to be issued, might of his own accord fetter it with the condition that the money should be brought into Court, the costs paid, or security given for costs, or such other terms as might naturally arise in his own mind, without the suggestion of any one else. The ground of our decision, therefore, is that, by the general analogy of the Common Law, this writ is the right of the subject, and that there are no words to fetter the authority of the Judge, or requiring that any other person than the applicant should appear before him. We think that on the true construction of this clause of the statute the writ may issue on an *ex parte* application, and consequently that the present rule must be discharged.

The application for a *certiorari* to remove a plaint

from the County Court must be made to a Judge at Chambers, and not to the Court: (*Robertson* v. ——, 3 C. C. Chron. 174.)

It has been held that a plaint entered under s. 122 of 9 & 10 Vict. c. 95, is not removeable by *certiorari*, as it is in a matter over which the Superior Courts have no jurisdiction: (*Price* v. *Price*, 3 C. C. Ch. 149.)

333*a*. *Reduction of Demand below 5l.*—A plaintiff may reduce his demand below 5*l.* in order to prevent its removal: (*Green* v. *Arundel*, 3 C. C. Chron. 115.) And that though a former plaint for the same cause of action has been removed by *certiorari*.

333*b*. *Abolition of Certiorari in certain cases.*—13 & 14 Vict. c. 61, s. 16, enacts:

13 & 14 Vict. c 61, s. 16.

Sect. 16. That no judgment, order, or determination given or made by any Judge of a County Court, nor any cause or matter brought before him or pending in his Court, shall be removed by appeal, motion, writ of error, *certiorari*, or otherwise, into any other Court whatever, save and except in the manner and according to the provisions hereinbefore mentioned.

This section, read by itself, would seem to take away the *certiorari* in all cases, but if we look at the context and construe it with reference to section 14, it will appear that the enactment is only intended to apply to the extended jurisdiction. Section 14 gives an appeal in cases within the extended jurisdiction only, and the section in question refers to such appeal, "shall not be removed, &c., save and except in the manner and according to the provision hereinbefore mentioned." The object of the provision seems therefore to be, to prevent all manner of appeal except the one provided by section 14, in cases wherein such appeal lies.

CAP. IV.*

APPEAL.

Section 14 of 13 & 14 Vict. c. 61, gives an appeal in all cases where the sum sought to be recovered exceeds 20*l*, in the following terms:

BOOK V. APPEAL TO SUPERIOR COURTS.

Cap. 4. *Suggestion.*

13 & 14 Vict. c. 61, s. 14.

Sect. 14. And be it enacted, that if either party in any cause of the amount to which jurisdiction is given to the County Court by this act shall be dissatisfied with the determination or direction of the said court in point of law, or upon the admission or rejection of any evidence, such party may appeal from the same to any of the Superior Courts of Common Law at Westminster, two or more of the puisne judges whereof shall sit out of term as a Court of Appeal for that purpose; provided that such party shall within ten days after such determination or direction, give notice of such appeal to the other party or his attorney, and also give security, to be approved by the clerk of the court, for the costs of the appeal, whatever be the event of the appeal, and for the amount of the judgment, if he be the defendant, and the appeal be dismissed; provided nevertheless, that such security, so far as regards the amount of the judgment, shall not be required in any case where the judge of the County Court shall have ordered the party appealing to pay the amount of such judgment into the hands of the clerk of the County Court in which such action shall have been tried, and the same shall have been paid accordingly; and the said Court of Appeal may either order a new trial on such terms as it thinks fit, or may order judgment to be entered for either party, as the case may be; and may make such order with respect to the costs of the said appeal as such court may think proper; and such orders shall be final.

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* This chapter in the former edition treated of SUGGESTION, but 13 & 14 Vict. c. 61, s. 11, provides that "it shall not be necessary to enter any suggestion on the record to deprive such plaintiff of costs."

BOOK V. APPEAL TO SUPERIOR COURTS. — *Cap. 4.* *Suggestion.*

13 & 14 Vict. c. 61, s. 15. Sect. 15. And be it enacted, that such appeal shall be in the form of a case agreed on by both parties, or their attorneys, and if they cannot agree the judge of the County Court, upon being applied to by them or their attorneys, shall settle the case, and sign it; and such case shall be transmitted by the appellant to the rule department of the Master's office of the court in which the appeal is to be brought.

The NOTICE of APPEAL may be as follows :—

In the County Court of A., *at* B.

Between { A. B., *Plaintiff*, *and* C. D., *Defendant*. }

Take notice that it is my intention to appeal to the Court of Queen's Bench [or *Exchequer of Pleas* or *Common Pleas*, as the case may be,] *against the direction of the said court in this suit.*

(*Signed*) A. B., *Plaintiff* [or *Defendant.*]

To Mr. C. D. *the Defendant* [or *Plaintiff*] *in this suit.*

A copy of this notice should be kept, and although personal service is not directed, it should be made if possible. If not, by leaving the notice at the place of abode of the party or with his attorney.

It will be observed that there is no appeal on matters of fact, and the only remedy for a wrong verdict, where the error does not depend on a question of law, is by an application to the Judge of the County Court for a new trial.

The appeal is given, first, where either party is dissatisfied with the determination or direction of the Court in point of law. Secondly, upon the admission or rejection of any evidence.

THE INTERPRETATION SECTION.

See 9 & 10 Vict. c. 95, s. 142, Appendix.

AFFIDAVITS.

13 & 14 Vict. c. 61, s. 23. Sect. 23. And be it enacted, that all affidavits to be used in the Courts holden under the said act of the tenth year of Her Majesty shall and may be sworn before any Judge of the said Courts, or any Master Extraordinary in Chancery, or Commissioner for taking affidavits in any of the Superior Courts of Westminster, or before a magistrate of the county, city, town, or place where any such affidavit may be sworn.

BOOK VI.

THE PRACTICE.

CAP. I.

THE PLAINT.

THE first proceeding to be taken is the entry of the plaint. For this purpose, besides the proper names and descriptions of plaintiff and defendant, it will be necessary to determine also the *form of action* (for which see JURISDICTION, *ante*, p. 218), that is, whether it should be on *contract* or in *tort*, whether it is requisite to *abandon any excess* (*ante*, p. 230), so as to bring it within the jurisdiction, and also to obtain *full particulars of demand*.

BOOK VI. THE PRACTICE. — *Cap. 1. The Plaint.*

337. *Where Plaint to be entered.*—The Plaint is to be entered at the office of the Clerk of the Court, by the Clerk or his Assistant. Where entered.

338. *How entered.*—It is to be entered in the manner directed by rule 1. How entered.

Rule 1. Every plaint must be entered upon application at the office of the Clerk, pursuant to the form in the Plaint Book in the schedule to these rules annexed.

And the form of entry is as follows:— (*a*)

(*a*) The plan is now generally adopted of a Plaint Book of very large dimensions, substantially bound, and completely ruled, with printed headings, so that it may serve for a long time. As this book is the permanent record of the Court, it should be so made and handled as to endure for centuries. Such a substantial Plaint Book has been constructed at the Office of the *County Courts Chronicle*, for the use of the Greenwich and other Metropolitan Courts, as the publisher informs us.

BOOK VI. THE PRACTICE.

Cap. 1. *The Plaint.*

I.—BOOK FOR PLAINTS AND INTERLOCUTORY PROCEEDINGS.

COUNTY COURT of at

Plaints for Summonses returnable the day of 1849, and Minute of Interlocutory Proceedings thereon.

Date	No.	Plaintiff.	Residence.	Trade.	Defendant.	Residence.	Trade.	Particulars of debt or claim.	Amount claimed.	General Fund.	Judge's Fee.	Clerk's Fee.	Bailiff's Fee.	Total Fees.	Interlocutory Proceedings.	Clerk's Fee.	Bailiff's Fee.	Total Costs previous to Trial.
									£ s. d.	£ s. d.	s. d.	s. d.	s. d	s. d.		s. d.	s. d	£ s. d.
1849 Jan 1.	1	J. Smith	Aire-st. Leeds	Mason	T. Smith	Arm-by	Baker	Goods sold	2 10 0	0 2 6	1 0	1 0	0 6	2 6	Set-off, Jan. 15.	1 0	0 0	0 6 0
	2	S. White	Bath	But-cher	F.Taylor	Strood	Mari-ner	Assault	20 0 0	1 0 0	3 0	3 6	1 6	8 0	Subpœna for Plaintiff, Jan. 13	1 6	1 6	1 11 0

Note.—As the plaints are to be numbered each year in the order in which they are entered (§ 59), the plaints in each succeeding year after the first must be distinguished by a letter for the facility of reference; and such letter must precede the number upon all the subsequent proceedings.

The entry in the Plaint Book is to state "the names and last known places of abode of the parties, and the substance of the action intended to be brought," and each one of such "plaints shall be numbered in every year, according to the order in which it shall be entered." "No misnomer or inaccurate description of any person or place in any such plaint or summons shall vitiate the same, so that the person or place be therein described so as to be commonly known:" (sect. 59.)

339. *Particulars to be stated in Plaint.*—The plaint must state "the names and last known places of abode of the parties, and the substance of the action intended to be brought:" (sect. 59.) What to state.

1. The parties. To ascertain who should be the parties, see *ante*, p. 264.
2. The names of the parties. The Christian and surname should be set out in full, and with accuracy. But a misnomer is not to vitiate, provided that the person be described so as to be commonly known. Therefore, the omission of one Christian name, if the party was commonly known by that one only; or even a different Christian name from his actual one, if he be so usually known, will not vitiate the plaint.
3. The last known places of abode of the parties. What is a man's place of abode is fully considered, *ante*, p. 190.
4. The substance of the action intended to be brought. By this term is intended *the nature* of the action. In this respect the practice varies according to the taste of the practitioner or of the Clerk. Some prefer to limit the description of the cause of action to the forms of action expressly recognized by the statute and rules, as "on contract," "on tort," or "of replevin," and this will suffice; but others prefer the more particular descriptions recognized by the Superior Courts in the rules of March 1847, as "on promises," for "goods sold," "money lent," "work and labour," "promissory notes," "interpleader summons on claim of A. B.," "trespass," "assault," and

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so forth. As, however, a statement of particulars of demand must accompany both plaint and summons, no purpose is served by departing from the general description of forms of action over which the County Courts have jurisdiction by the statute.

It has been decided that it is not necessary to allege in the plaint that the cause of action arose within the jurisdiction of the Court, as formerly it was in all declarations in inferior Courts: (*Cowley* v. *Clayton*, 1 C. C. Chron. 124.)

Cowley v. *Clayton*.

The plaint must, however, strictly follow the terms of the Act in the statement of the cause of action. Thus, where a plaint for a breach of warranty stated the suit to be "in assumpsit," it was held to be an improper description and vitiate: (*Wells* v. *Sutton*, 1 C. C. Chron. 284.)

Wells v. *Sutton*.

Cause of action.

340. *Causes of Action.*—For the convenience of those who may prefer to give a more particular description of the cause of action, we subjoin a list of such as are within the jurisdiction of the Court, and likely to occur in practice, stated in the form usually employed in the Superior Courts, and which may be adopted with safety:

Actions on Contract.

1. *Goods sold.*—For £——, for goods sold by the plaintiff to the defendant.
2. *Work and Materials.*—For £——, for work done and materials provided by the plaintiff for the defendant.
3. *Money lent.*—For £——, for money lent by the plaintiff to the defendant.
4. *Money paid.*—For £——, for money paid by the plaintiff for the use of the defendant.
5. *Money received.*—For £——, for money received by the defendant for the use of the plaintiff.
6. *Account stated.*—For £——, for money due from the defendant to the plaintiff on an account stated between them.
7. *Interest.*—For £——, for interest upon certain money due from the defendant to the plaintiff.
8. *Use and Occupation.*—For £——, for the use and occupation of a certain [messuage, or rooms and apart-

ments, as the case may be] of the plaintiff, and with his permission held and occupied by the defendant.

9. *Board and Lodging.*—For £——, for meat, drink, washing, and lodging,' attendance, and other necessaries provided for the defendant by the plaintiff.

10. *Wages.*—For £——, for wages due from the defendant to the plaintiff in respect of service done by him as the hired servant of the defendant.

11. *Goodwill of Business.*—For £——, for the goodwill of a certain business of the plaintiff, relinquished and given up by him to the defendant.

12. *Hire of Goods.*—For £——, for the use and hire of certain [furniture, plate, or horses, as the case may be] by the plaintiff let to hire to the defendant and by him under that hiring had and used.

13. *Attorney's Costs.*—For £——, for the work, care, and attendance of the plaintiff done as the attorney and solicitor of the defendant, and for materials for such work provided by the plaintiff.

14 *Surgeon and Apothecary.*—For £——, for the work, care, and attendance of the plaintiff done as a surgeon and apothecary for the defendant, and for medicines and other necessary things provided for you by the plaintiff.

Statement of cause of action on contract.

15. *General Agent.*—For £——, for work done by the plaintiff as the agent of the defendant, and for commission payable to him in respect thereof.

16. *Stabling.*—For £——, for horse-meat, stabling, and attendance, provided by the plaintiff at the defendant's request.

17. *Carriage of Goods.*—For £——, for the carriage of certain goods carried by the plaintiff for the defendant.

18. *Seaman's Wages.*—For £——, for wages due from the defendant to the plaintiff for the service of the plaintiff as mariner of a certain vessel whereof he was [master or owner, as the case may be] during such service.

19. *Bill of Exchange.*—For £——, due on a bill of exchange drawn by [the plaintiff, or the defendant, or A. B., as the case may be] upon and accepted by [the defendant or C. D., as the case may be], for the payment of £—— —— months after date: (if the plaintiff sues as indorsee, then add the following) and by [the said A. B., or the defendant, as the case may be] indorsed to the plaintiff.

20. *Promissory Note.*—For £——, due on a promissory note made by [the defendant or A. B., as the case may be], for the payment of £——, to [the plaintiff, or

to the order of C. D., or the defendant, as the case may be], ——months after date: (if the plaintiff sues as indorsee then add) and by the said [C. D., or the defendant, as the case may be] indorsed to the plaintiff.

21. *Guarantee.*—For £——, due upon a certain guarantee, whereby the defendant guaranteed to the plaintiff the payment of certain goods [as the case may be], to be supplied to A. B., by the plaintiff.

22. *Partnership Balance.*—For £——, for money due from the defendant to the plaintiff, on the balance of a partnership account between the defendant and the plaintiff.

23. *Share under an Intestacy.*—For £——, due to the plaintiff from the defendant as the administrator of the goods and chattels of A. B., deceased, who died intestate, on account of the plaintiff's distributive share of the goods and chattels of the said deceased.

24. *Legacy.*—For £——, due to the plaintiff from the defendant as the executor of the will of A. B. deceased, on account of a legacy bequeathed to the plaintiff by the said will.

Statement of cause of action on contract.

25. *On a Mortgage.*—For £——, on account of principal and interest due from the defendant to the plaintiff upon a certain indenture of mortgage dated the —— day of ——.

26. *On a Money Bond.*—For £——, on account of principal and interest due on a bond bearing date the —— day of ——, and made by the defendant to the plaintiff.

27. *On a Judgment.*—For £——, due on a judgment of the court of ——, for the sum of £——, recovered by the plaintiff against the defendant, on the —— day of ——.

28. *For not accepting Goods sold.*—For that the defendant would not accept certain goods of the plaintiff, or pay him for the same, according to a contract in that behalf made, whereby the plaintiff has sustained damage to the amount of £——.

29. *For not delivering Goods bought.*—For that the defendant would not deliver to the plaintiff certain goods which he bought of the defendant, according to the contract under which the same were bought, whereby the plaintiff has sustained damage to the amount of £——.

30. *On a Warranty.*—For that a certain [horse or dog, as the case may be] was not ["sound," or "free from vice," as the case may be, according to the terms of

the warranty] as promised by the defendant, at the time of its sale by the defendant to the plaintiff, whereby the plaintiff has sustained damage to the amount of £——.

31. *For not taking care of Furniture, &c. lent.*—For that the defendant did not take proper care of certain furniture and goods [as the case may be] let to hire to him, whereby the plaintiff has sustained damage to the amount of £——.

32. *Against a Carrier for Loss of Goods.*—For that the defendant did not safely carry and deliver for the plaintiff certain goods, from —— to ——, according to the terms under which the defendant received the said goods, whereby the plaintiff has sustained damage to the amount of £——.

CHARACTER IN WHICH THE PLAINTIFF SUES ON CONTRACT.

1. *Surviving Partner.*—For £——, for goods sold [stating the nature of the debt as before described] to the defendant by the plaintiff and one A. B. since deceased.

2. *Husband and Wife.*—For £——, for goods sold [stating the nature of the debt as before] to the defendant by the said —— [insert here the Christian name of the wife], whilst she was sole and unmarried.

3. *Assignees.*—For £——, for goods sold [stating the nature of the debt as before] to the defendant by the said A. B. before he became a bankrupt.

4. *Executors.*—For £——, for goods sold [stating the nature of the debt as before] to the defendant by the said testator A. B., in his lifetime.

ACTIONS FOR TORT.

Statement of cause of action in tort.

1. *Assault and Battery.*—For that the defendant assaulted and beat the plaintiff [or A. B. the wife of the plaintiff, as the case may be], whereby the plaintiff has sustained damage to the amount of £——.

2. *False Imprisonment.*—For that the defendant assaulted the plaintiff, and imprisoned and detained him in prison without any reasonable or probable cause, whereby the plaintiff has sustained damage to the amount of £——.

3. *For an illegal Distress.*—For that the defendant seized and distrained certain goods and chattels of the plaintiff, and ["carried away" or "impounded," as the case may be] and detained the same ["until the

plaintiff paid the defendant the sum of £——," or "and converted and disposed thereof to his own use," as the case may be], whereby the plaintiff has sustained damage to the amount of £——.

4. *For Trespass in a Dwelling-house and taking Goods therein.*—For that the defendant broke and entered a certain dwelling-house of the plaintiff, situate at ——, and also seized and took therefrom certain goods and chattels of the plaintiff, and converted the same to his own use, whereby the plaintiff has sustained damage to the amount of £——.

5. *For Injury from improper Driving.*—For that the defendant [or where it was from the driving of the defendant's servant, add, "by the careless driving of the defendant's servant"] so improperly drove a certain cart [or "carriage," as the case may be] that it struck and injured a certain horse [or "carriage," as the case may be] of the plaintiff, whereby the plaintiff has sustained damage to the amount of £——.

Statement of cause of action in tort.

6 *Injury from improper Navigating.*—For that the defendant [or where it was from the act of the defendant's servants, add, "by the mismanagement of the defendant's servants"] so improperly navigated a certain vessel [or "barge," as the case may be] that it struck and injured a certain vessel [or "barge," as the case may be] of the plaintiff, whereby the plaintiff has sustained damage to the amount of £——.

7. *Trover for Goods, &c.*—For that the defendant converted and disposed of to his own use certain cattle [or bills of exchange, securities for money, goods and chattels, as the case may be] of the plaintiff, which came to him by finding, whereby the plaintiff has sustained damage to the amount of £——.

CHARACTER IN WHICH PLAINTIFF SUES FOR TORT.

1. *Husband and Wife.* (*a*) —For that the defendant assaulted and beat the said ———— [insert here the Christian name of the wife] then being the wife of the said A. B. [the name of the husband], whereby the plaintiffs have sustained damage to the amount of £——.

2. *Assignees.*—For that the defendant converted and disposed of to his own use certain goods and chattels [as the case may be] of the plaintiffs as assignees of the above bankrupt, which came to him by finding,

(*a*) When the husband has been put to expense in consequence of the injury to his wife, he should sue alone, according to form No. 1, p. 367.

whereby the plaintiffs as such assignees have sustained damage to the amount of £——.

3. *Executors.*—For that the defendant converted and disposed of to his own use certain goods and chattels [as the case may be] of the plaintiffs, as executors of the above testator A. B., which came to him by finding, whereby the plaintiffs as such executors have sustained damage to the amount of £——.

PARTICULARS OF PLAINTIFF'S DEMAND IN ACTION OF CONTRACT.

No.

In the County Court of *at*

(Seal.)

Between { *A. B., Plaintiff,* *and* *C. D., Defendant.* }

Particulars of demand.

The following are the particulars of the plaintiff's demand, referred to in the annexed summons:—

1846.

		£	s.	d.
August 12.	To making and erecting a bookcase...	15	0	0

[Here set out the various items of the plaintiff's bill. If the items are numerous, and a bill has been delivered to the defendant, it may often be sufficient to state them in the following manner:—]

	£	s.	d.
To amount as per bill delivered for goods sold [or for doing certain work, describing it, as the case may be], between the day of and the day of 1846	10	14	0
To wages due from the defendant to the plaintiff for services performed from the day of to the day of 1847, at £ per month.................	8	0	0

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	To the amount of the bill of exchange [or promissory note, as the case may be], mentioned in the annexed summons............	12	0	0
Sept. 8.	To cash lent to the defendant	2	0	0
	£			
Oct. 2.	By cash received from the defendant £			
	Balance due .... £			

Given under the Seal of the Court this day of 18 .

Clerk of the Court.

To the above-named defendant.

PARTICULARS OF PLAINTIFF'S CAUSE OF ACTION IN ACTIONS FOR TORT.

Particulars of demand.

No.

In the County Court of at

(Seal.)

Between { *A. B., Plaintiff, and C. D., Defendant.*

The following are the particulars of the plaintiff's cause of action referred to in the annexed summons :—

For the injury mentioned in the annexed summons sustained by the plaintiff, on the day of last.

Also for the following expenses incurred by the plaintiff in consequence of such injury:

[Here set out the expenses.]

Also for the loss of [or *injury to*, as the case may be], *the following goods:*

[Here specify them.]

Given under the Seal of the Court this day of 18 .

Clerk of the Court.

To the above-named defendant.

CONSENT FOR AN ORDER TO PAY DEBT AND COSTS. (*a*)

No.

In the County Court of *at*

Between { *A. B., Plaintiff,* *and* *C. D., Defendant.* }

I hereby consent to an order of the said court being made, that the plaintiff do recover against me the sum of £ for his debt [or *damages*, as the case may be], *in this action, together with the costs incurred by him therein, and that I do pay the same to the clerk of the said court at his office on the day of next* [or *by instalments, at such periods as the court shall order*]. *Dated this day of 18 .*

Signed [*C. D.*]

Witness (*b*)

Clerk of the said Court.

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341. *Clerk to give Plaintiff a Note on entering Plaint.*—By rule 3 the Clerk is required to give the plaintiff on his entering his plaint a note in the form prescribed. Note of plaint.

Rule 3. At the time of entering the plaint, the Clerk of the Court shall give to the plaintiff a note according to the form in the said schedule; and no money shall be paid out of Court to the plaintiff unless on production of such note, or by order of the Judge.

And the following is the form of such note:

4. PLAINTIFF'S NOTE ON ENTERING PLAINT. (*c*)

No.

County Court of *at*

£ *Fees paid.*

The above cause [or *causes*] *will be tried at*

(*a*) This form may be useful when both parties are anxious to save the expense of proving the plaintiff's case at the trial; and the same has been framed by analogy to a Judge's order in the superior courts for payment of debt and costs, so as not to require a stamp, or to amount to a cognovit within the meaning of the 1 & 2 Vict. c. 110, s 9: (see *Bray* v. *Manson*, 8 M. & W. 668; and *Baker* v. *Flower*, 8 M. & W. 670.)

(*b*) This is not necessary, but for greater security may be advisable.

(*c*) Where a plaintiff enters several plaints, one note will be sufficient, specifying the numbers of the plaints.

on at o'clock in the fore-noon.

To A. B. the above-named plaintiff. Office at (*Signed*) *Clerk of the Court.*

Hours of attendance from 10 *to* 4.

Take notice, you must bring this note with you when you come to the court, or to the office of the clerk, for any purpose, and in case of loss of it, you must immediately give notice thereof at my office.

You may have a summons to compel the attendance of any witnesses, or for the production of any books or documents you may require, on early application at the office of the clerk, and on payment of the expenses thereof.

Particulars of demand.

342. *Particulars of Claim to be given by Plaintiff.*—Rule 2 requires in certain cases that as many copies of the plaintiff's particulars of demand or cause of action shall be delivered at the office of the Clerk on entering the plaint as there are defendants, with an additional copy to file; as follows:

Rule 2.

Particulars of demand.

Rule 2. On entering the plaint, the plaintiff shall, if the sum sought to be recovered shall exceed 5*l*., deliver at the office of the clerk as many copies of a statement of the particulars of his demand or cause of action as there are defendants, with an additional copy to file: provided always, that in all cases, the Judge, in his discretion, and on such terms as he may think fit, may adjourn the cause at the hearing, for the delivery of a statement of particulars, or further particulars.

These particulars should accurately and minutely state the subject-matter of the plaintiff's demand, for they are in fact the substitute in the practice of the County Courts for the declaration in the Superior Courts. It should be remembered, in framing them, that they constitute the *only* notice the defendant has of the demand which he is to come prepared to meet, and such reasonable accuracy in its statement will be required by the Courts as shall secure the defendant against surprise. Again, it is to be borne in mind, that the plaintiff himself will be bound by his own particulars; that he will not be permitted to travel out of them or to prove anything not there distinctly demanded. Should he make any omissions, he will

lose the items omitted: if he inserts any he is unable to prove, he will be liable to pay to the defendant any costs he may incur by reason of that portion of the claim.

The rule makes it compulsory to deliver particulars of demand only in cases where the sum sought to be recovered exceeds 5*l.*; but it would appear on principle that even in other cases there ought to be some particulars accompanying the summons, and the latter portion of the section empowers the Judge to adjourn the case in order that a statement of particulars, or better particulars, may be delivered. The words of the rule are general, and the discretion of the Judge to order the delivery of a statement of particulars is not confined to cases where the demand is above 5*l.*, but it extends to all actions whatever.

The following are forms of particulars of demand:

STATEMENT OF PARTICULARS IN ACTIONS OF ASSUMPSIT AND DEBT.

No.

In the County Court of *at*

Between { *A B, Plaintiff, and C. D., Defendant.* }

The plaint has been entered to recover the sum of ten pounds due on the following items of account: — Particulars of demand in assumpsit and debt.

[Here insert a copy of the account, with the dates of delivery of goods or work done.]

Above are the particulars of the plaintiff's demand in this action. Dated this *day of* 18 .

A. B., Plaintiff.

PARTICULARS ON A BALANCE OF AN ACCOUNT.

[Heading as above.]

The plaint has been entered to recover the sum of ten pounds being the balance due to the plaintiff upon the following items of account: — Particulars on a balance of account.

	£	*s.*	*d.*
[Set out plaintiff's account in detail, and the total, say]	25	0	0
[*Due from plaintiff to defendant for rent*, as the case may be]	15	0	0
Balance due to the plaintiff	£ 10	0	0

[Conclusion as above.]

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Particulars on a Bill of Exchange or Promissory Note.

[Heading as above.]

Particulars on a bill of exchange.

The plaint has been entered to recover the sum of ten pounds the amount of a certain bill of exchange [or *promissory note*], *of which the following is a copy* [here state copy of bill or note].

[Conclusion as above]

Particulars on an Agreement.

[Heading as above.]

Particulars in an agreement.

The plaint has been entered to recover the sum of ten pounds the amount due to the plaintiff upon a certain agreement in writing, made with the plaintiff by the defendant, of which the following is a copy [add copy of agreement, or, if it be very long or apply to some other matters not the subject of the present action, it will suffice to state it thus, *the substance of which said agreement, so far as it relates to the demand which is the subject of this action is as follows:*—here state the substance of the agreement as it affects the present suit.]

Particulars in an Action on Covenant.

[Heading as above.]

Particulars in covenant.

The plaint has been entered to recover twenty pounds, being the amount due from the defendant to the plaintiff under and by virtue of a certain deed bearing date the day of and made between E. F. and G. H.

[Conclusion as above.]

Particulars in tort.

343. *Particulars in Actions of Tort.*—In actions of tort, the particulars should state briefly, but distinctly, the grounds of the action, that is, *the grievance of which the plaintiff complains, with the time and place at which it was committed.* But it would appear, that some of the Judges have held that statement of time and place, however desirable, is not necessary to the validity of a plaint. Thus, in an action for an assault, it was held by the Judge of the County Court of *Kent* that the summons (which follows the plaint

in this respect) was sufficient, although it did not specify any day on which the assault was committed: (*Spooner* v. *Sutton*, 1 C. C. Chron. 213). And the Judge of the *Berks* County Court has held, that a summons for an assault need not state the time when, and place where, it was committed, as "the substance of the action," for only one assault being in question no surprise could accrue to the defendant from the omission, and the cause of action was *substantially* stated without it: (*Anon.* 1 C. C. Chron. 123.)

The following are forms of particulars of demand *in tort;* they may with ease be adapted to the particular facts of each case.

FORM OF PARTICULARS IN AN ACTION OF TORT.

No.

In the County Court of *at*

Between { *A. B., Plaintiff,* *and* *C. D., Defendant.* }

This plaint has been entered to recover the sum of twenty pounds which the plaintiff claims of the defendant for

An assault *committed upon the plaintiff by the defendant, at* *in the parish of* *in the county of* *on the* *day of* 18 . Assault.

OR,

A trespass *committed by the defendant on the* *day of* 18 , *upon a certain close of the plaintiff, situate at* *in the parish of* *in the county of* Trespass to land.

OR,

The false imprisonment *of the plaintiff by the defendant at the parish of* *in the county of* *on the* *day of* 18 . False imprisonment.

OR,

Negligently driving *a cart of the defendant against a cart of the plaintiff and thereby injuring the same at the parish of* *in the county of* *on the* *day of* 18 . Case for negligent driving.

OR,

For that the defendant, being a common carrier, *did so negligently carry a certain parcel of goods to him committed by the plaintiff to be carried from A. to B., on the* *day of* 18 , *that the same was lost.* Case against a carrier.

Case against an innkeeper

OR,

For that the defendant, being an innkeeper, *did receive of the plaintiff a certain carpet bag containing divers valuable goods, and did so negligently guard the same that it was lost to the plaintiff.*

[And in like manner varying it for each particular case.]

Above are the particulars of the plaintiff's demand in this action. Dated this day of 18 .

A. B., Plaintiff.

STATEMENT OF PARTICULARS IN TROVER.

[Heading as above.]

Particulars in trover.

This action is brought to recover the sum of twenty pounds for the unlawful detention and conversion of [describe the property detained.]

Dated this day of 18 .

A. B., Plaintiff.

Abandonment of excess.

344. *Excess must be abandoned.*—It will be remembered that, to enable an action to be brought for the recovery of a demand exceeding 20*l.* the plaintiff must abandon the *excess* above that sum, and this should be done in the particulars of demand. (See *ante*, p. 230.) The form of such particulars may be as follows :

FORM OF PARTICULARS WHEN PLAINTIFF ABANDONS EXCESS ABOVE 20*l.*

No.

In the County Court of at

Between { *A. B., Plaintiff,* *and* *C. D., Defendant.* }

This plaint has been entered to recover the sum of twenty pounds, part of the sum of thirty pounds which the plaintiff claims to be due to him from the defendant. But the plaintiff having abandoned the excess of such claims beyond the sum of twenty pounds, now demands of the defendant the sum of twenty pounds upon the following particulars, namely,

[Here give full particulars of the entire claim of 30*l.* (or as the case may be)].

The above are the particulars of the plaintiff's demand in this action. Dated this day of 18 .

A. B., Plaintiff.

345. *Other Points to be observed.*—The particulars must be written in English,—it will not suffice even in Wales that they be written in Welsh: (*Evans* v. *Hanmer*, 1 C. C. Chron. 1.) The practitioner must be cautious not to state the particulars too generally. Where the particulars of demand stated only, "To bill delivered, 7*l.* 18*s.* 4*d.*," it was held not to be such a statement of particulars as was required by the Act: (*Demblebee* v. *Ross*, 1 C. C. Chron. 152.) So where the particulars stated only, "To amount of goods sold and delivered 20*l.*:" (*Jones* v. *Howell*, 1 C. C. Chron. 22.) So where the plaint was "For 2*l.* 16*s.* for work and labour done," but the summons and particulars were for "a balance of account," the Court (*Berkshire*) adjourned the hearing for plaintiff to furnish precise particulars of his demand: (*Slade* v. *Davis*, 1 C. C. Chron. 123.) And where the plaint was for "money lent," the plaintiff was not allowed to recover for money expended: (*Coley* v. *Waddels*, 1 C. C. Chron. 15, *Warwickshire*.)

Points to be observed in stating particulars. *Evans* v. *Hanmer*. *Demblebee* v. *Ross*. *Jones* v. *Howell*. *Slade* v. *Davis*. *Coley* v. *Waddels*.

But, on the other hand, there are many reported cases in which the Courts have shown an inclination not to be very strict in the requirement of verbal or even substantial accuracy in the particulars of demand. Thus, "money lent and advanced" was held to be sufficient to let in evidence of money paid to defendant's use: (1 C. C. Chron. 39, *Oxfordshire*.) Under a claim in plaint and particulars for "tuition of defendant's sons, James and Henry," evidence was allowed to be given of tuition to another son William, the words James and Henry being rejected as surplusage, and the particulars read as if they had stood only "for tuition of defendant's sons," not naming them: (*Colloys* v. *Curtis*, 1 C. C. Chron. 24, *Kent*.) So "money lent" was held to be a sufficient statement of the substance of the action in an action on a promissory note, if money lent was shown to be the consideration of it: (*Huxtable* v. *Kingdon*, 1 C. C. Chron., April, 1848.) Where a promissory note was for 4*l.* and the plaint and summons claimed interest, not specifying the amount, and the Court fees were good for 4*l.* only, the plaintiff was allowed to recover

Anon. *Colloys* v. *Curtis*. *Huxtable* v. *Kingdon*.

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5*l.* 4*s.*, including six years' interest: (*Davis* v. *Davies*, 1 C. C. Chron. 81, *Cardiganshire.*)

Davis v. Davies.

So also where, in an action by the husband for an assault on his wife, the summons stated that the defendant assaulted and "beat" plaintiff's wife, and the particulars alleged the committal of a gross outrage and "violent assault" on plaintiff's wife, but did not aver a beating, the variance was held immaterial: (*Coombe* v. *Potter*, 2 C. C. Chron. 92.)

Coombe v. Potter.

Brand v. Southgate.

Kanby v. Roach.

In one case the Court has not required particulars to state, in an action for rent, the parish in which the premises are situate: (*Brand* v. *Southgate*, 1 C. C. Chron. 15.) But in *Kanby* v. *Roach* (1 C. C. Chron. 321), the Judge of the Whitechapel Court held that, if a summons for recovery of possession misstates the parish in which the tenement is situated, it will be void. It seems, however, that the chief reason for this decision was, that in an action for the recovery of a tenement the jurisdiction of the Court must depend on the situation of the premises. And, notwithstanding the above decision in *Brand* v. *Southgate*, we would recommend that, in all cases of *tort*, the time and place be stated in the particulars, and it would be desirable that the Judges should exercise considerable strictness in requiring an explicit, although not technical, setting out of the cause of action in the particulars, recollecting that these are the only information given to the defendant of the demand he must come prepared to meet. Hitherto they have been somewhat too lax in this respect.

Particulars of demand.

Score v. Cookman.

Omissions of dates may be excused: (*Score* v. *Cookman*, 1 C. C. Chron. *Dorset.*) On the sale of a cow, another cow of smaller value, warranted sound, and the balance in cash, were given as payment. It was agreed that, if the cow was not sound, its value fixed should be paid in cash. The cow proved to be unsound, and died, and an action was brought for "*goods sold and delivered,*" and it was held to have been rightly so brought, and that it needed not to have been an action on the warranty: (*Cliffe* v. *Underhill*, 1 C. C. Chron. 209, *Birmingham.*) Where a Bailiff detains goods wrongfully, the cause of action was allowed to be described as "*contract in detinue*:" (*Elliott* v. *Perkins*, 1 C. C. Chron. 6, *Yorkshire.*) And where the plaint was for 10*l.* "in suit for a

Cliffe v. Underhill.

Elliott v. Perkins.

legacy," it was held to be good on the objection that it ought to have been "in debt:" (*Skinner* v. *Skinner*, 9 Law T. 87, *Cambridgeshire.*)

The summons and particulars must substantially agree, that is to say, the cause of action stated in the summons must appear in the particulars; they must not contradict each other, although they may explain one another, and an *omission* in one may be supplied by the other; for the summons and particulars may be construed together, to show the cause of action: (*Findlay* v. *Kingsland*, 1 C. C. Chron. 65, *East Kent.*) And the particulars form part of the summons, and if correct, will cure an omission in the summons itself: (*Sims* v. *Rush*, 1 C. C. Chron. 15, *Berkshire.*) Where the summons claimed 20*l.*, but the particulars served on defendant amounted to 21*l.* 14*s.* the Court ordered a fresh summons, although the copy of particulars filed with the Clerk admitted payment of 1*l.* 14*s.*: (*Blakemore* v. *Wright*, 1 C. C. Chron. 15, *Warwickshire.*) Where the summons was for "*cattle* and sheep," and the particulars were for "*beef* and sheep," the summons was dismissed: (*James* v. *Grove*, 1 C. C. Chron. 38, *Worcestershire.*) So when the summons was for 19*l.* 5*s.*, for "goods sold and delivered," and the particulars were for 3*l.* 6*s.* for "cash lent," and 3*l.* 11*s.* for "cash paid," the summons was dismissed with costs: (*Hutter* v. *Cowell*, 9 Law T. 87.) And in one case where the summons differed from the particulars in the statement of the cause of action, liberty to amend was refused, although the particulars were correct: (*Evans* v. *Owens*, 1 C. C. Chron. 81, *Cardiganshire.*) And where the summons was for "goods bargained and sold," and the evidence was of goods manufactured to order, the plaintiff was nonsuited: (*Rose* v. *Henderson*, 1 C. C. Chron. 62, *Staffordshire.*) But the propriety of this decision may be doubted, and it was questioned in *Wilson* v. *Crowe* (1 C. C. Chron. 82, *Cambridgeshire.*)

Skinner v. *Skinner*. *Findlay* v. *Kingsland*. *Sims* v. *Rush*. *Blakemore* v. *Wright*. *James* v. *Grove*. Particulars of demand. *Hutter* v. *Cowell*. *Evans* v. *Owens*. *Rose* v. *Henderson*. *Wilson* v. *Crowe*.

But, on the other hand, the Courts will usually construe the summons and particulars very liberally, and disallow merely technical objections, taking care only to see that the party for whose benefit the statement is supplied cannot reasonably be misled by it. Thus, where a party, by mistake, claimed in his particulars less than he claimed in his summons, and less than he was entitled to, he was held not to be con-

Watson v. Hemingway. Anon. Webster v. Littler.

cluded thereby: (*Watson* v. *Hemingway*, 1 C. C. Chron. 154.) And where the particulars claimed 58*l.* 9*s.* but without expressly abandoning the excess, the plaintiff was permitted to abandon the residue at the hearing, the defendant not having been misled or inconvenienced by it: (*Anon.* 1 C. C. Chron. 81, *Berkshire.*) And so in *Webster* v. *Littler* (1 C. C. Chron. 104), an objection was overruled that the particulars did not contain an abandonment of the excess. And where the summons was "on contract," but the particulars and the cause of action as proved were founded in *tort*, the variance was held immaterial:

Cobb v. Taylor.

(*Cobb* v. *Taylor*, 1 C. C. Chron. 211, *Dorset.*) But this appears to us to be straining liberality of construction, for here there is an obvious variance, and in a matter which affects the jurisdiction and the cause. The whole proceedings form one record, and an entry of a plaint on *contract* cannot, by any stretch of construction, be read so as to sustain a verdict, damages, and costs for *tort*.

Evans v. Owens.

The particulars will not supply an entire omission in the summons of any statement of the substance of the cause of action: (*Evans* v. *Owens*, 1 C. C. Chron. 1, *Cardiganshire.*) The decisions are conflicting upon the question whether it is necessary that, in an action for above 5*l.*, the summons should refer to the particulars by some such words as "particulars of which

Nicholls v. Davey. Hall v. Bennett. Anderson v. Merrefield.

are hereunto annexed," or the like. In *Nicholls* v. *Davey* (1 C. C. Chron. 62, *Cornwall*), and in *Hall* v. *Bennett* (1 C. C. Chron. 24, *Hampshire*), it was held *not* to be requisite; but otherwise in *Anderson* v. *Merrefield* (1 C. C. Chron. 38.)

Hall v. Bennett.

The 2nd rule made by the Judges requiring particulars to be delivered in cases where the amount claimed exceeds 5*l.*, is not to be taken as imperative in every case, and clearly not in an action on a promissory note, and for interest thereon: (*Hall* v. *Bennett*, 1 C. C. Chron. 24, *Hampshire.*)

From the foregoing observations the following general rules may be deduced :—

1st. The particulars must agree with the summons.

2nd. They must be limited to the cause of action disclosed in the summons.

3rd. The plaintiff cannot give evidence of any matter not stated in the particulars: (1 Arch. N. P. 14.)

4th. No particulars are necessary where the demand is of such a nature as to be sufficiently explained by the summons.

346. *When to take the Objection, &c.*—Where the plaint or particulars are irregular or defective, the most convenient plan will be to take the objection at once, if the defect appears on the face of the proceedings. If the defect be not one of substance, it seems that a delay in taking the objection will amount to a waiver, otherwise not. However, Mr. FURNER, Judge of the Sussex Court, held that an objection to the principle of a plaint should be made before the case commences; but an objection to the sufficiency of a plaint, as regards some part of the case only, may be reserved until the evidence has been gone into: (*Hewitt* v. *Hollingdale*, 2 C. C. Chron. 119.) *Hewitt v. Hollingdale.*

347. *Amendment.*—Where the defect is a mere irregularity, the Court may order an amendment. Thus, where the name of the plaintiff was improperly spelt, the Court refused to nonsuit, but ordered the plaint and summons to be amended: (*Braizer* v. *Smith*, 2 C. C. Chron. 269, *Sheriff's Court, City.*) *Braizer v. Smith.*

CAP. II.

SUMMONS AND PARTICULARS.

I. Form and Requisites of Summons.

Section 59. Suits to be by plaint.

348. *Suits to be by Plaint.*—When the plaint has been entered, it is the duty of the Clerk of the Court to issue a summons in the form prescribed by the Judges, and containing the substance of the plaint.

Sect. 59. And be it enacted, that, on the application of any person desirous to bring a suit under this act, the clerk of the Court shall enter in a book to be kept for this purpose in his office a plaint in writing, stating the names and the last known places of abode of the parties, and the substance of the action intended to be brought, every one of which plaints shall be numbered in every year according to the order in which it shall be entered; and thereupon a summons, stating the substance of the action, and bearing the number of the plaint on the margin thereof, shall be issued under the seal of the Court according to such form, and be served on the defendant so many days before the day on which the Court shall be holden at which the cause is to be tried, as shall be directed by the rules made for regulating the practice of the Court, as hereinafter provided; and delivery of such summons to the defendant, or in such other manner as shall be specified in the rules of practice, shall be deemed good service; and no misnomer or inaccurate description of any person or place in any such plaint or summons shall vitiate the same, so that the person or place be therein described so as to be commonly known.

Rule 4. Summons to be according to the form in the schedule, dated as of the day of entry of plaint.

Rule 4. The summons to appear to a plaint shall be issued according to the forms in the schedule, and shall be dated as of the day on which the plaint was entered.

The following is the form referred to:

1.—SUMMONS TO APPEAR TO PLAINT.

No. of plaint.

In the County Court of *at*

(Seal.) *A. B., Plaintiff,*

C. D., Defendant.

You are hereby summoned to appear at a County Court to be holden at *on the* *day of* *at the hour of* *in the forenoon, to answer the above-named plaintiff in an action on contract* [or, *in an action for tort*], *for* [here state the substance of the cause of action.]

	£	s.	d.
Debt or claim..............................			
Cost of summons and service...............			
Paying money into and out of Court, entering satisfaction, &c.			
	£		

The summons.

[*the particulars of which are hereunto annexed,* where the cause of action exceeds 5*l.*]; *and take notice, that in case you shall have been personally served with this summons, an application may be made immediately after a judgment has been obtained against you, to commit you to prison, under the provisions of the statute in that behalf made and provided, in which case the Judge of the said Court will proceed to hear and determine such application, and make such order thereupon as he shall think fit, whether you shall be then present or not.*

Given under the seal of the said Court, this *day of* 18 .

Clerk of the Court.

To *the above-named defendant.*

[N. B.—See Notice at back of this summons.]

The following notice must be endorsed on the back of the summons:

NOTICE.

N. B.—If you admit the whole or any part of the plaintiff's demand, by paying into the office of the Clerk of the Court at *the amount so admitted, together with the costs,*

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five clear days before the day of appearance, you will avoid any further costs, unless, in case of part payment, the plaintiff at the hearing shall prove a demand against you exceeding the sum so paid into Court.

If you have any defence to the demand, by way of set-off, or on account of your being an infant, or married woman, or by reason of the Statute of Limitations, or of your discharge by bankruptcy, or under any act for the relief of insolvent debtors, the same cannot be admitted unless you give notice thereof in writing, and if a set-off, of the particulars of such set-off, to the Clerk of the Court, at the above-named office, five clear days before the day of hearing.

If the debt or claim exceed five pounds, you may have the cause tried by a jury, on giving notice thereof in writing at the said office of the clerk two clear days at least before the day of trial, and on payment of the fees for summoning, and payable to such jury.

Notices of defence cannot be served unless the fees for entering and serving the same be paid at the time the notices are given.

You may have a summons to compel the attendance of any witness, and the production of any books or documents, on applying at the office of the Clerk of the Court.

Bring this summons with you when you come to the Court or to the office of the Clerk. Office hours from 10 *to* 4.

Classification of actions. Actions on contract.

349. *Classification of Actions.*—The actions for which a summons may issue in the County Court are divided into two classes, actions on contract and actions for tort.

The actions on contract are:—

1. Assumpsit.
2. Debt.
3. Account.
4. Covenant.
5. Detinue. (*a*)

(*a*) It has been doubted whether detinue can be brought in the New County Courts, and there are many reasons for holding that it cannot. See *Wickham* v. *Lee* (1 Cox & Mac. 119); see also Lloyd on Prohibition, p. 100, n. See also *Talbot* v. *Froggett* (2 C. C. Chron. 6.)

The actions for torts are:—

1. Trespass to land.
2. Trespass to personal property.
3. Trespass to the person.
4. Case.
5. Trover.
6. Replevin. (*b*.)

The 59th section of the statute directs that the summons shall state *the substance of the action*, which may be done as follows in the various forms of action: see also for other statements of action in the plaint, p. 340.

1. Assumpsit.

"In an action on contract;—For that you in consideration of promised the plaintiff [state the contract], but that you have not performed your said promise; whereby the plaintiff hath sustained damage to the amount of £ — On an agreement.

For that you are the acceptor of a bill of exchange, dated , drawn by the plaintiff for £ at months after date, and now due and unpaid. — On a bill of exchange, *Drawer* v. *Acceptor*.

For that you are the drawer of a bill of exchange, dated , drawn by you and accepted by A. B., payable to the plaintiff or his order, two months date, for £ which was duly presented for payment when due, and was not paid, of which presentment and nonpayment you have had due notice. — On a bill of exchange, *Indorsee* v. *Drawer*.

For that you are the indorser of a bill of exchange, dated , drawn by A. B. upon and accepted by C. D. for £ , at months after date, and indorsed to the plaintiff, which was duly presented for payment when due, and was not paid, of which presentment and nonpayment you have had due notice. — On a bill of exchange, *Indorsee* v. *Indorser*.

For that you are the maker of a promissory note for £ , dated payable months after date to the plaintiff or his order, and now due and unpaid. — On a promissory note, *Payee* v. *Maker*.

For that you are the indorser of a promissory note of A. B., for £ , payable to C. D. on demand, and by him indorsed to you, and by you indorsed to — On a promissory note, *Indorsee* v. *Indorser*.

(*b*) The practice in replevin will be treated of separately.

the plaintiff; which was duly presented for payment when due, and was not paid, of which presentment and nonpayment you have had due notice.

2. DEBT.

On a judgment of a Superior Court. "In an action on contract;—For that by a judgment of Her Majesty's Court of , of Term, A. D. 18 , you are indebted to the plaintiff in £ , and that you have not paid the same.

On a bond. For that by your bond, under your seal, dated , you are indebted to the plaintiff in the sum of £ , and that you have not paid the same.

For arrears of an annuity. For that by your deed, under your seal, dated you granted an annuity of £ , to the plaintiff, and that £ for one year's annuity is now due from you to the plaintiff, and is now unpaid.

On simple contract; for goods sold and delivered; "In an action on contract;—For that you are indebted to the plaintiff in £ for [goods sold and delivered to you by the plaintiff], and that you have not paid the same.

for goods bargained and sold; *Or*, for goods bargained and sold to you by the plaintiff;

for work done; *Or*, for work done for you by the plaintiff;

for money lent; *Or*, for money lent to you by the plaintiff;

for money paid; *Or*, for money paid for you by the plaintiff;

for money received; *Or*, for money had and received by you for the plaintiff;

on an account stated; *Or*, for money found to be due from you to the plaintiff on an account stated between you and him;

for interest; *Or*, for interest on money lent to you by the plaintiff, which interest you agreed to pay him;

on an attorney's bill; *Or*, for work, labour, care, and diligence done, performed and bestowed for you by the plaintiff as an attorney;

on a surgeon's bill; *Or*, for medicines and other things administered, applied and delivered to you and your family by the plaintiff, as a surgeon and apothecary;

on a carrier's bill; *Or*, for the carriage of goods for you by the plaintiff;

for rent of a house; *Or*, for the use and occupation by you of a certain house of the plaintiff;

Or, for the good-will of a certain business relinquished by the plaintiff to you; for the good-will of a business;

Or, for fixtures of, and in a certain dwelling-house, sold and delivered to you by the plaintiff; for fixtures;

Or, for meat, drink, and lodging provided for you by the plaintiff; for lodging, &c.;

Or, for hay and corn and stabling for your horse, provided by the plaintiff at your request; for stabling, &c.;

Or, for the depasturing and feeding certain cows belonging to you by the plaintiff at your request. for depasturing of cattle.

3. Account.

"In an action on contract;—For that you did not account with the plaintiff in respect of and are now indebted to him in £ with respect to the same. For an account.

4. Covenant.

"In an action on contract;—For that by your deed under your seal, dated , you covenanted to, &c. , and that you have broken the said covenant, whereby the plaintiff hath sustained damages to the amount of £ . For breach of covenant.

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1. Trespass to Land.

"In an action for tort;—For that you unlawfully entered a close of the plaintiff, and there trod down the grass [or as the case may be], whereby the plaintiff has sustained damage to the amount of £ . For entering a close, &c.

2. Trespass to Personal Property.

"In an action for tort;—For that you did break and injure a certain carriage of the plaintiff [or as the case may be] whereby the plaintiff hath sustained damages to the amount of £ . For injury to personal property.

3. Trespass to the Person.

"In an action on contract;—For that you assaulted and beat the plaintiff, whereby he sustained damage to the amount of £ . For an assault;

Or, For that you did unlawfully imprison the defendant, against his will, whereby he sustained damages to the amount of £ . for false imprisonment.

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4. Case.

Against a carrier.

"In an action for tort;—For that you, as a carrier for hire, were entrusted with a parcel of goods of the plaintiff, to be carried from   to   , and that you by your negligence and carelessness lost the same, whereby the plaintiff hath sustained damages to the amount of £   .

For keeping a vicious dog.

Or, For that you kept a dog which you knew was accustomed to bite mankind, and the said dog did bite and lacerate the arm of the plaintiff, whereby the plaintiff sustained damages to the amount of £   .

5. Trover.

Trover for a spade.

"In an action for tort;—For that you converted a spade belonging to the plaintiff to your own use, whereby the plaintiff hath sustained damages to the amount of £   .

350. *Particulars of Demand must be annexed to the Summons.*

Rule 5.

Particulars of demand must be attached to the summons.

Rule 5. The Clerk shall annex to each summons to be served, one of the copies of the statement of the particulars of the plaintiff's demand furnished to him pursuant to rule 2, sealed with the seal of the court.

As to particulars, see *ante*, p. 363, *et seq.*

351. *The Plaintiff will, at the Trial, be restricted to the Cause of Action stated in the Summons.*

Section 75.

No evidence to be given that is not in summons.

Sect. 75. And be it enacted, that no evidence shall be given by the plaintiff on the trial of any such cause as aforesaid of any demand or cause of action, except such as shall be stated in the summons hereby directed to be issued.

Meaning of term "cause of action."

It would appear that the terms "demand" and "cause of action," as used in this section, are to a great extent synonymous, and mean *what may be the subject of one action in the County Court*. See *Grimbley* v. *Aykroyd* (1 Ex. 479). It seems, therefore, that the summons need not specify each item or each particular contract, but that evidence may be given of any separate demand which is contained in the general cause of action, though it be not specifically named.

The general cause of action must, however, be correctly stated; thus it was held by Mr. Trafford, Judge of the Birmingham Court, in the case of *Coley* v. *Waddells* (1 Cox & Macrae, 26), that the plaintiff could not, under a summons for *money lent*, recover money expended for the defendant's use.

The cause of action must be correctly stated.

Thus, also, where a summons stated the action to be brought "for goods sold and delivered by the plaintiff to you," but it appeared that the goods had been supplied to the defendant's husband (since deceased), the plaintiff was held not entitled to recover. Per Mr. Collyer, Judge of the Cambridgeshire Court, in the case of *Tomson* v. *Marshall*, and the Judge of the Westmoreland Court in *Clarke* v. *Winskill* (1 C. C. Chron. 38.)

Coley v. *Waddells* (1 Cox & Macrae, 26.)

Tomson v. *Marshall*; *Clarke* v. *Winskill* (1 C. C. Chron. 38.)

The Judge of the Oxfordshire Court, however, decided that evidence may be given of money paid to the defendant's use under a summons "for money lent and advanced:" (*Biggerstaffe* v. *Payne*, 1 C. C. Chron. 39.)

Biggerstaffe v. *Payne* (1 C. C. Chron. 39.)

The following are the most important reported decisions of the Judges of the County Courts as to what is a sufficient statement of the cause of action.

Decisions as to what is a sufficient statement.

On the sale of a cow, another cow of smaller value, warranted sound, and the balance in cash, were given in payment. It was agreed that if the cow was not sound, its value fixed should be paid in cash. The cow died, and an action was brought for "goods sold and delivered." The Judge of the Birmingham Court held that the form of action was right, and need not be for breach of warranty: (*Cliffe* v. *Underhill*, 1 C. C. Chron. 209.)

Cliffe v. *Underhill* (1 C. C. Chron. 209.)

It was held by the Judge of the Devonshire Court, in the case of *Huxtable* v. *Kingdom* (1 C. C. Chron. 211), that "money lent" is a sufficient statement in the summons of a cause of action on a promissory note, if money lent were the consideration of it.

Huxtable v. *Kingdom* (1 C. C. Chron. 211.)

In a case where the summons claimed 4*l*., the amount of a promissory note and interest, without specifying the amount, and the Court fees were paid on 4*l*. only, the plaintiff was allowed to recover 5*l*. 4*s*. including six years' interest: and the attorney's costs were granted. Per the Judge of the Caermarthenshire Court in the case of *Davies* v. *Davies* (1 C. C. Chron. 81.)

Davies v. *Davies* (1 C. C. Chron. 81.)

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Colleys v. *Curtis* (1 C. C. Chron. 24.

It was held by the Judge of the County Court of Kent, in the case of *Colleys* v. *Curtis* (1 C. C. Chron. 24), that under a claim by summons and particulars, for "tuition to the defendant's sons, James and Henry," evidence may be given of tuition to another son, William, the words "James and Henry" being regarded as surplusage.

Rose v. *Henderson* (1 C. C. Chron. 62.)

Mr. Temple, Judge of the Staffordshire Court, in the case of *Rose* v. *Henderson* (1 C. C. Chron. 62), the summons being for goods bargained and sold, and the evidence being of goods manufactured to order, nonsuited the plaintiff.

Spooner v. *Sutton* (1 C. C. Chron. 213.)

The Judge of the Kent Court held, in the case of *Spooner* v. *Sutton* (1 C. C. Chron. 213), that in an action for an assault, the summons was sufficient, although it did not specify any day on which the assault was committed.

The same was held by the Judge of the Berkshire Court (*Anon.* 1 C. C. Chron. 123.)

Amendment and dismissal.

352. *Amendment and Dismissal.*—If the summons does not sufficiently state the cause of action, or is otherwise defective, the only course open to the Judge seems to be to dismiss the summons, and it would appear that he has no power to amend it. The statute does not give the Judges any power to amend such process, and they have no such power at common law. The Judge of South-West Wales accordingly held, in the case of *Evans* v. *Owens* (1 C. C. Chron. 81), that the summons cannot be amended by the particulars. And Mr. Trafford held, in *Coley* v. *Waddells*, that if the summons be insufficient as to part of the claim, it will be dismissed, so as to enable the plaintiff to issue a fresh summons.

Evan v. *Owens* (1 C.C. Chron. 81.)

Dismissal in the nature of a nonsuit.

353. *Dismissal, a Proceeding in the nature of a Nonsuit.*—This dismissal, however, must, it seems, be in the nature of a nonsuit, and the plaintiff must commence a fresh action, as the Judge has no power to direct a fresh summons to issue on the original plaint in such a case. The statute and rules contemplate only one summons on each plaint, and in cases where the Statute of Limitations would be a bar to the action, if the plaintiff were obliged to commence a fresh action, express power is given by

the rules of practice to direct a fresh summons to issue on the original plaint.

354. *No Misnomer, &c., to vitiate Proceedings.*—It is enacted by the 59th section of the statute that "no misnomer or inaccurate description of any person or place in any such plaint shall vitiate the same, so that the person or place be therein described so as to be commonly known." But the variance must not be such as is calculated to mislead, otherwise it will be fatal, notwithstanding these provisions. Thus in the case of *Foster and another* v. *Temple* (1 Cox & Macrae, 185), a summons was issued in which the defendant was described as executor of William Thompson, whereas he was described in the plaint as executor of William Taylor. The Judge of the County Court dismissed the summons, and directed a fresh one to issue in order to save the Statute of Limitations. Afterwards, on an application for a prohibition, PATTESON, J., said "that the first summons, which varied from the plaint, and was dismissed for irregularity, was no summons at all."

No misnomer to vitiate proceedings.

Foster v. *Temple* (1 Cox & Macrae, 185.)

Where, in an action for the use and occupation of a field, against Jonathan Davies, the summons described him as John Davies, which was the name on his carts, it was held by the Judge of South-West Wales, in *Brigstoke* v. *John Davies and another* (1 C. C. Chron. 22), that the summons was defective, as it did not appear that the defendant was commonly known as John Davies.

Brigstoke v. *Davies* (1 C.C. Chron. 22.)

Where one of several partners was sued alone for a debt, and described in the title at the head of the summons as George Taylor, but at the foot it was addressed to William Taylor, Mr. HILDYARD held the variance fatal: (—— v. *George Taylor*, 1 C. C. Chron. 16, *Leicester*.)

—— v *George Taylor* (1 C.C. Chron. 16.)

355. *Waiver of Irregularity.*—Mr. STAPYLTON, Judge of the Durham Court, in the case of *Storey* v. *Smith* (1 C. C. Chron. 103), held that where a defendant, having been summoned by a wrong name, appeared to the summons generally, such appearance amounted to a waiver of the irregularity. If, however, the defendant appears, either in person or by attorney, only for the purpose of taking the objection, the appearance in that case cannot be considered a waiver.

Waiver of irregularity.

Storey v. *Smith* (1 C.C. Chron. 103.)

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On the dismissal of summons fresh summons may issue in some cases (*Foster* v. *Temple* (1 Cox & Macrae, 185,) but not in other cases.

356. *On the Dismissal of Summons fresh Summons may issue in certain Cases.*—When a summons has been dismissed on the ground of variance, the Court may, in order to save the Statute of Limitations, direct a new summons to issue on the original plaint, dated as of the day on which the original plaint was entered: (*Foster and another* v. *Temple*, 17 L. J. 230, Q. B.; 1 Cox & Macrae, 185.) In other cases it seems that the Judge cannot direct a fresh summons to issue on the original plaint; but if the dismissal has been in the nature of a nonsuit a fresh action may be brought: (see, *ante*, p. 390.)

357. *One of several Persons liable may be sued.*—A summons may issue against one of several persons jointly liable.

Section 68. — One of several persons liable may be sued.

Sect. 68. And be it enacted, that where any plaintiff shall have any demand recoverable under this Act against two or more persons jointly answerable, it shall be sufficient if any of such persons be served with process, and judgment may be obtained and execution issued against the person or persons so served, notwithstanding that others jointly liable may not have been served or sued, or may not be within the jurisdiction of the Court; and every such person against whom judgment shall have been obtained under this Act, and who shall have satisfied such judgment, shall be entitled to demand and recover in the County Court under this Act contribution from any other person jointly liable with him.

Parkin v. *Cropper and Hurst* (1 C. C. Chron. 23.)

Where a debt had been incurred by A. and B. the churchwardens of a past year, and the summons had been taken out against B. and C. the churchwardens of the following year, it was held by Mr. Smith, Judge of the Leicester Court, that, B., being a churchwarden for both years, the summons was good under this section: (*Parkin* v. *Cropper and Hurst*, 1 C. C. Chron. 23.)

68th section does not apply to husband and wife.

This section does not apply to cases where, according to the practice of the Superior Courts, it is required to sue husband and wife jointly; they are not *jointly* answerable, and therefore, do not come within the words of the section. It was accordingly held by Mr. Fraser, in the case of *Cox* v. *Ratcliffe* (1 C. C. Chron. 173, *Surrey*), and by Mr. Temple, in *Gal-*

Cox v. *Ratcliffe* (1 C. C. Chron. 173.)

laghan v. *Thompson* (1 C. C. Chron. 62, *Staffordshire*), that if a husband be sued alone for a debt contracted by his wife before marriage, the plaintiff must be nonsuited.

Gallaghan v. *Thompson* (1 C. C. Chron. 62.)

The 68th section is confined in terms to defendants, and it seems that in every case where it is necessary to join several plaintiffs in the Superior Courts, it is also necessary to join them in an action in the County Courts. Thus it was held by Mr. ESPINASSE, Judge of the Kent Court, in the case of *Tinker* v. *Small* (1 C. C. Chron. 151), that where two persons were entitled to a house as joint tenants, one joint tenant could not sue alone for rent, though the other joint tenant had parted with his moiety.

68th section does not apply to plaintiffs.

Tinker v. *Small* (1 C.C. Chron. 151.)

358. *Joinder of different Demands.*—It would seem that the same rule as to joinder of different demands in one action, which prevails in the Superior Courts, applies also to proceedings in the County Courts. Debts of a totally different nature and those due from a defendant in different characters cannot, therefore, be joined together in the same summons. Thus, in a case where a debt due from the defendant as executrix, and a debt due from her in her own right, were joined together in the same summons, Mr. JOHNS, Judge of the South-West Wales District, held that the two demands could not be joined together in the same summons, and that the plaintiff was bound to elect: (*Morris* v. *Johnson*, 1 C. C. Chron. 23.)

Joinder of different demands.

Morris v. *Johnson* (1 C. C. Chron. 23.)

II. RETURN OF THE SUMMONS.

It appears by the authorized form of summons and the 6th rule of practice that it must be made returnable on a Court day, and this, by rule 5, must be ten clear days at least after the service of the summons.

Return of summons.

The Judge of the North-West Wales District issued the following general order with reference to the return of summonses, and it would be well if a similar rule were adopted in other Courts.

Order.

"*It is ordered, that summonses in respect of plaints after the commencement of twelve clear days, exclusive of Sundays, next before the holding of the next Court, shall be made returnable at the next Court but one subsequent to the entering of such plaints, and not at the next Court.*"

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Rule 46.

359. *Return of Summons.*—This is regulated by the 46th rule, as follows:

Rule 46. Eight days before the day of the holding of the Court, the High Bailiff shall deliver to the Clerk of the Court a list of all summonses to appear which shall have been served, and the Clerk shall forthwith stick up such list in his office.

III. Service of Summons.

Service within the district.

By the 60th section it is enacted, that the "summons may issue in any district in which the defendant or one of the defendants shall dwell or carry on his business at the time of the action brought."

The following rules are applicable to the service of summonses generally:

Rule 6.

Service must be ten clear days before the return day.

Rule 6. Every such summons must be served ten clear days before the holding of the court at which it shall be returnable.

Rule 7.

Service must be either personal or by leaving it at house, &c.

Rule 7. The service of any summons to appear to a plaint must be either personal, or by delivering the same to some person at the place of abode or the place of business of the defendant.

Rule 8.

What a sufficient service on seaman, soldier, &c.

Rule 8. Where a defendant shall be living or serving on board of any ship or vessel, or be residing or quartered in any barracks, and serving Her Majesty as a soldier or marine, it shall be sufficient service to deliver the summons to the senior officer on board, or to the person who may at the time have charge of such ship or vessel, or to the adjutant of the corps, or any officer or sergeant of the company to which such soldier or marine shall belong or be attached.

Rule 9.

What a sufficient service on miners.

Rule 9. Where a defendant shall be working in any mine or other works carried on under ground, and the bailiff shall not be able to serve him with a summons, as hereinbefore directed, it shall be sufficient service to deliver the summons to the engineman, banksman, or other person in charge of such mine or works.

Rule 10.

What sufficient service when the defendant keeps his house.

Rule 10. Where any defendant shall, by keeping his house or place of abode closed, or by violence or threats, prevent any Bailiff from serving the summons as hereinbefore directed, and such summons shall have been affixed on the door of such house or place of abode, or otherwise served as nearly as may

be according to the mode hereinbefore directed, such service shall be deemed good service.

Rule 11. Provided that in all cases where a summons to appear to a plaint shall not have been served personally, and the defendant shall not appear at the return day, it must be proved to the satisfaction of the Judge, that the service of such summons has come to the knowledge of the defendant ten clear days before the said return day

Rule 11. — Proof of the defendant's knowledge of service.

Rule 12. Where any such summons has not been served as hereinbefore directed, the Judge may, in his discretion, in order to save the Statute of Limitations, direct another summons, or successive summonses to be issued, bearing the same date and number as the first summons.

Rule 12. — Fresh summons to save the statute of limitation.

Rule 13. The Bailiff who serves a summons to appear to a plaint shall endorse on a copy of such summons the time and manner of the service thereof, and shall produce such copy, so endorsed, at the Court at which such summons shall be returnable, and such copy shall be filed by the Clerk of the Court.

Rule 13. — Endorsement by bailiff.

Rule 46. Eight days before the day of the holding of the Court, the High Bailiff shall deliver to the Clerk of the Court a list of all summonses to appear which shall have been served, and the Clerk shall forthwith stick up such list in his office.

Rule 46. — List of summonses.

Rule 50. No summons, notice, order, or other process shall be served on Sunday, Christmas-day, or Good Friday; but such days shall be counted in the computation of the time required by these rules, unless any of such days shall be the last day of such time, in which case it shall be excluded from such computation.

Rule 50. — Sunday, &c.

It was held by the Judge of the Cardiganshire Court that the original summons should be served, and a copy filed, as, in his opinion, the words of the Act required *the* summons to be served: (*Evans* v. *Owens*, 1 C. C. Chron. 81.)

Evans v. *Owens* (1 C. C. Chron. 81.)

360. ***Questions as to Service, &c., within the exclusive Jurisdiction of the County Court Judges.***—It has been decided by the Superior Courts at Westminster that all questions respecting the service of summonses and the regularity of such service belong to the ex-

Questions as to service, &c., within the exclusive jurisdiction of the County Court Judges.

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clusive cognizance of the County Courts Judges. The cases are important, and will require to be inserted here at some length:

The case of *Robinson* v. *Lenaghan* (1 Cox & Macrae, 97,) was as follows:

Robinson v. *Lenaghan* (1 Cox & Macrae, 97.)

A summons was issued out of the Middlesex County Court against the defendant, and served at Paull's Villa, at which place the defendant had never resided; proof of the service was accepted by the Judge, and in the defendant's absence the plaintiff was heard and obtained judgment, and thereupon execution issued. The first intimation the defendant had of any such action being brought was the appearance of the Bailiff at his residence in Highbury Villas, to levy. The defendant applied to the Judge of the Court from which execution had issued for a new trial, which the Judge consented to grant upon terms that the defendant should undertake to appear and defend the action on its merits, and to bring no action against the officer. This the defendant refused, but applied to the Superior Court for a prohibition.

Pollock, C. B.—I am of opinion this rule should be discharged. Looking at the clauses of the act, and particularly at the 80th section, which directs what proceedings shall be adopted if the defendant does not appear, it is clear the County Court has jurisdiction over the matter, and the Judge, upon due proof of service of the summons, may proceed to the hearing of the cause on the part of the plaintiff only, and the judgment shall be as valid as if both parties had attended. The term *due* must be that which is sufficient to satisfy the mind of the Judge, and if he is satisfied that is enough. He has the power to give relief, as that section of the Act enables him, and he was willing to do so, but the defendant, it seems, declined to accept it.

Parke, B.—I am of the same opinion. The effect of the 80th section is in fact to place the judgment of the Court of inferior jurisdiction on the same footing as the judgment of the Superior Court. It would be very inconvenient if every judgment could be questioned here.

Rolfe, B.—I am of the same opinion. The reading of the 80th section is, that if the Judge of the Inferior Court is satis-

fied as to the due service of the summons, he may proceed; but Mr. *Willes* reads it "on service of the summons, and due proof made thereof."

Platt, B.—I think we should not interfere. It is peculiarly within the jurisdiction of the Judge of the County Court; indeed, upon the proceedings there does not appear that there is anything to prohibit; the money may have found its way back into the party's own pocket.

In the case of *Zohrab* v. *Smith* (1 Cox & Macrae, 106), the same principle is still more explicitly stated.

Zohrab v. *Smith* (1 Cox & Macrae, 106.)

The plaintiff sued the defendant in the County Court of Bloomsbury for the value of some fixtures. The summons was not personally served, but was left at the defendant's dwelling-house with his servant, the day of its return being the 23rd of December, 1847. Leave was obtained by the defendant from a Judge at chambers to remove the plaint to this Court, but no *certiorari* was issued before the return of the summons, on which day, the defendant not appearing, but the plaintiff being prepared to try his cause, and evidence having been given to the Judge that the summons was left at the defendant's residence on the 11th of December, and the Judge being satisfied that the 11th rule had been complied with, the cause was heard and judgment given for the plaintiff. Subsequently, on the 14th of January, the defendant applied for a new trial, on the ground that the summons had not come to his knowledge until the 14th of December (not being ten clear days before its return, as provided by the 11th rule). The bailiff, however, swore to having served the summons on the 11th. The Judge offered to grant the defendant a new trial on terms to which the defendant did not accede. The amount of the judgment was afterwards paid into Court, and since then the *certiorari* was issued. Subsequently a rule *nisi* for a prohibition was obtained, on the ground that there was not sufficient evidence of the summons having come to the defendant's knowledge ten clear days before it was returnable, which rule was, after argument, discharged.

Coleridge, J.—There are some points in this case which, if they had been material to the decision of it, I should have taken time to have considered; but I think I can well dispose

of this case upon a very plain and intelligible ground. A writ of prohibition never issues merely because a step taken in a Court below may have been unwise or unjust, nor because we may think a decision unsatisfactory, but only because we find that the Court has exceeded, or is about to exceed, its jurisdiction. Now, in the present case, the Inferior Court has acted upon two occasions, once on the 23rd of December, and again on the 14th of January, and on the first of these occasions it is said that it acted without jurisdiction. Let me concede, for the sake of argument, that on the first of these occasions the due service of the summons is a condition precedent to the Court entering upon the case, and this is stating the case most strongly for the defendant; the rule directs, that in all cases where a summons to appear shall not have been served personally, and the defendant shall not appear on the return, it must be proved to the satisfaction of the Judge, that the service of such summons has come to the knowledge of the defendant ten clear days before the said return day. There is certainly no direct evidence of what the form of proof was before the Judge upon the 23rd of December, but it is sworn that it was to the satisfaction of the Judge; but, whatever the proof may have been, whether it was to his satisfaction or not, was for him to determine, and although I may say that if I had been in his situation and had heard the proof or seen the affidavit I may not have been satisfied, it was a matter entirely within his discretion, with which I cannot interfere. But when I argue as though it were necessary to originate jurisdiction that this proof should be given, I by no means wish it to be understood that such is my opinion, for I should say that it is entirely the other way, and that if the *cause* is within the jurisdiction of the Court, this is merely a rule to direct the Judge in the exercise of his jurisdiction. It may be compared to a notice of trial. If no notice of trial had been given in an action in one of the Superior Courts, it would certainly be a ground for a new trial, but such notice would not be necessary to give jurisdiction to try. So much, therefore, as to what took place on the 23rd of December. Then as to the proceedings on the 14th of January. The defendant was then before the Court, and what then took place is very strong against the argument of Mr. *Willes*; for the Judge then said, "I am now satisfied that the summons

was served on the 11th of December, but not that it came to the knowledge of the defendant before the 14th;" and he might well say so on that occasion, and declare his opinion on the conflict of evidence, that if all these facts had been brought before him on the 23rd of December, he should not have decided as he did. But this has nothing to do with the decision on the 23rd of December, which is the occasion to which we must look. Upon this short point I think the rule must be discharged. There may be a hardship upon the defendant in having his money locked up as it is, and something ought to be done; but I cannot interfere in this way.

The third case is that of *Waters* v. *Handley* (1 Cox & Macrae, 139.)

Waters v. *Handley* (1 Cox & Macrae, 139.)

This was an application for a prohibition to the Clerkenwell County Court; and it was held, that the County Court has jurisdiction over bills of exchange That where it appeared that the defendant had never been summoned, and the Judge of the County Court had, nevertheless, proceeded to adjudicate in the matter, this Court, considering the determination whether the process was regular or not to lie properly in the Judge of the County Court, will not interfere by prohibition.

Neither will the Court interfere by prohibition, because the summons, having been obtained by leave of the Court for the district in which the defendant dwelt or carried on his business within six months next before action brought, or in which case the cause of action arose, did not, on the face of it, show that it had been obtained by leave of such Court.

Gresty v. *Hulme* (1 C.C. Chron. 82.) Undertaking of attorney to appear.

In the case of *Gresty* v. *Hulme* (1 C. C. Chron. 82), Mr. HARDEN, Judge of the Cheshire Court, held that an attorney's undertaking to appear is equivalent to service.

Evans v. *Jones* (1 C. C. Chron. 1.) Who to serve summons.

It has been doubted whether service by any other person than a Bailiff or Assistant Bailiff of the Court can be deemed good service: (see *Evans* v. *Jones*, 1 C. C. Chron. 1.)

What sufficient proof of knowledge.

Where personal service is practicable, all the proof of service necessary seems to be that the service was made in time, and that it was made by the proper officer; but in cases where the defendant cannot be personally served, it will be necessary to prove such

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facts and circumstances as will satisfy the Judge that the summons has come to the defendant's knowledge ten clear days at least before the return day. The following are some of the reported decisions of the County Court Judges on this subject:

Hollier v. *Wade* (1 C.C Chron. 24.)

Where the defendant locks himself up in his own house in order to avoid service, it will be sufficient to nail the summons on the front door. Per Mr. GALE in *Hollier* v. *Wade* (1 C. C. Chron. 24, *Hampshire*).

Wren v. *Crouch* (9 Law T. 88.)

Where the summons was given to the mother of the defendant, who said her son would not return till the evening, when she would deliver it to him, it was held that the mother ought to have been subpœnaed to prove that the defendant had got the summons ten days before the return day: (*Wren* v. *Crouch*, 9 L. T. 88, *Sussex*.)

Anon. (9 Law T. 62.)

If the defendant prove that he did not know of the summons ten clear days before the hearing, the service will be insufficient: (*Anon.* 9 Law T. 62, *Essex*.)

Eagleton v. *Shalders* (9 Law T. 62.)

The Judge of the Norfolk County Court held that when a summons had been served on the wife, she might be called to prove that her husband had knowledge of it ten clear days before the return day: (*Eagleton* v. *Shalders*, 9 Law T. 62.) But the Judge of the Hertfordshire County Court held the contrary: (*Speck* v. *Spark*, 9 Law T. 42; *Baines* v. *Taylor*, *ib.*)

Speck v. *Spark*; *Baines* v. *Taylor* (9 Law T. 42.)

Serj. STORKS (Shoreditch) held that a summons is not sufficiently served by being left at a house at which the defendant lodged, with a person who said that he was a friend of the defendant, and would give it to him: (*Anon.* 2 C. C. Chron. 158.)

Williams v. *Davies* (1 C.C. Chron. 15.)

The Judge of the Cardiganshire County Court held, in the case of *Williams* v. *Davies* (1 C. C. Chron. 15), that the Court, in that and in all other cases where the service was at the dwelling-house on some person not the defendant, would be satisfied with the Assistant Bailiff's statement that he found that the defendant was sleeping at home, and was expected home on the night of the service.

Dawson v. *Tipper* (1 C.C. Chron. 15.)

A summons was served on the defendant's wife at his residence on the last day allowed for such service: the defendant was from home, and there was no proof that the summons came to the defendant's knowledge that night. This was held an insufficient service. Per WHARTON, Judge of the Yorkshire Court, in *Dawson* v. *Tipper* (1 C. C. Chron. 15).

Mr. GALE has held, at Southampton, that if at the time of the service no objection be made to short notice, the defendant cannot at the hearing raise such an objection: (1 C. C. Chron. 15.)

Anon. (1 C. C. Chron. 15.)

In the case of *Vice* v. *Porter* (9 Law T. 87), it appeared that the Assistant Bailiff had left the summons with the wife of the defendant, who informed him that her husband would be at home in the evening, when she would give it to him. The Judge of the Northumberland Court held this to be good service.

Vice v. *Porter* (9 Law T. 87.)

When the summons was served, on the 10th, and the defendant proved to have returned home on the 11th, having been from home till then, and the Court was held on the 21st, the Judge of the Essex County Court held that this was not a clear ten days' service: (9 Law T. 62.)

Anon. (9 Law T. 62.)

The Judge of the Leicestershire Court held, that where a defendant was from home, and had been so for some days, and the summons was served on the mother only, the service was insufficient: (*Alibone* v. *Dawkins*, 1 C. C. Chron. 152.)

Alibone v. *Dawkins* (1 C. C. Chron. 152.)

Where the defendant had gone to work at some distance from home, and was not expected to return until harvest time, service at his dwelling-house was considered insufficient. Per the Judge of the Cardiganshire Court, in *Rees* v. *Evans* (1 C. C. Chron. 1).

Rees v. *Evans* (1 C.C. Chron. 1.)

Service on the wife of the defendant at his house, when the defendant himself had gone to reside in another county, was held insufficient. Per the Judge of the Caermarthenshire Court, in *Thomas* v. *Thomas* (1 C. C. Chron. 22.)

Thomas v. *Thomas* (1 C. C. Chron. 22.)

In the case of *Hench* v. *Mills* (1 C. C. Chron. 17), it was held by Mr. TRAFFORD, Judge of the Warwickshire Court, that service on the wife of the defendant at his dwelling-house, it appearing that the husband was expected home to dinner on that day, was sufficient.

Hench v. *Mills* (1 C. C. Chron 17.)

In the case of *Philips* v. *Lewis* (1 C. C. Chron. 2), it was held that service on the wife of a sea captain, he being at sea, was insufficient, but as a special plea had been put in the case was gone into. Per the Judge of the Cardiganshire Court.

Philips v. *Lewis* (1 C. C. Chron. 2.)

In a case where the Bailiff had served the summons on the defendant's wife at his dwelling-house eleven days before the Court day, and was told by her that

Brennard v. *Whittaker* (1 C. C. Chron. 39.)

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her husband had been that day taken into custody, and carried before the magistrates at a distance, on a charge of poaching, on which charge she expected he would be committed to prison, the Judge of the Lancashire Court held the service insufficient: (*Brennard* v. *Whittaker*, 1 C. C. Chron. 39.)

Tardrew v. *Davies* (1 C.C. Chron. 3.)

Semble, that if the defendant's wife purposely and fraudulently omits to inform the defendant of the service of the summons, the service should notwithstanding be considered sufficient. Per the Judge of the Pembrokeshire Court, in *Tardrew* v. *Davies* (1 C. C. Chron. 3.)(a)

Webber v. *Penycuick* (2 C. C. Chron. 231.)

When it appeared that the defendant was in India, his wife and family residing within the jurisdiction of the Court, Mr. Francillon held that the service was insufficient unless it appeared that the summons had come to the defendant's knowledge ten clear days before the return: (*Webber* v. *Penycuick*, 2 C. C. Chron. 231.) This decision is certainly correct as far as it goes, but it seems to us that even proof of knowledge within ten days would not be enough under such circumstances. The defendant should have ten days to prepare his defence, and it is evident that the framers of the rules of practice did not anticipate that actions would be brought against parties resident in foreign countries.

Holman v. *Parr* (2 C. C. Chron. 231.)

When the last day of service was on a Friday, and the defendant's servant said that the defendant would be home on Friday or Saturday, Mr. Francillon held the service insufficient: (*Holman* v. *Parr*, 2 C. C. Chron. 231.)

In trespass for false imprisonment, the defendant justified under process out of a County Court in a suit there by the defendant against the plaintiff. It was proved that the defendant, having a debt due from one Ireland, sent in a bill by a messenger, who by mistake delivered it to the plaintiff. A summons was afterwards issued by the defendant out of the

Skinner v. *Foster* (1 C.C. Chron. 104.)

(a) Mr. Koe, Judge of the Essex County Court, is reported to have held, in the case of *Skinner* v. *Foster* (1 C. C. Chron. 104), that though it appeared the defendant did not know that a summons had issued against him, and that it was only by accident that he happened to be present (he having been subpœnaed as a witness in another cause), the service was sufficient to entitle him to proceed with the case. It is, however, to be hoped that this ruling will not generally be followed, as it seems to be in direct violation of the Rules of Practice.

County Court against Ireland; but that summons was also served upon the plaintiff. Upon proof of service, judgment was obtained *ex parte* against Ireland, and afterwards a summons and *capias* were issued to enforce that judgment. All the proceedings were against Ireland by name, and all served upon the plaintiff, who throughout informed those who served him that he was not Ireland. It was held by the Court of Queen's Bench that the plea was not proved, inasmuch as the process had been issued by the defendant against Ireland, and the allegation that the defendant issued the summons against the plaintiff was material, and was contrary to the fact. And that, as the process had been executed against the plaintiff by the direction of the defendant, he was answerable in trespass: (*Whalley* v. *M'Connell*, 2 C. C. Chron. 253.)

Service may be either personal or by delivery.

361. *Service may be either personal or by delivery.*—The service of a summons may, by the 7th rule, be either personal or by delivering it to some person at the place of abode or the place of business of the defendant.

What a place of abode.

362. *What a Place of Abode.*—As to what constitutes "a place of abode," see *ante*, pp. 190—193. To the definitions there given, we may add the following, extracted from the second edition of Mr. Cox's *Practice of Poor Removals*, where the same question as to what constitutes abode or residence, which are identical, arises.

Residence.

"It is a term whose signification varies in various statutes, and the question has usually arisen under the election statutes. We venture to suggest that it is synonymous with the term '*abode*,' which signifies the place in which a person is with the intention of remaining as his home. If there be a purpose to stay there only for an interval and then to go to some other place to abide, the party is a visitor and not a resident. If a man has a family, his residence is where they dwell, even although he may be living and sleeping elsewhere, for he is presumed to have the *animus revertendi*. Thus in the case of *Whithorne* app. v. *Thomas* resp. (7 Man. & Gr. 5), where the question was raised as to the meaning of the term 'residence'

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in the Reform Act, it was remarked by ERLE, J., that 'the fact of sleeping in a place by no means constitutes a residence, though, on the other hand, it may not be necessary for the purpose of constituting a residence in any place to sleep there at all. If a man's family are living in a borough, and he is absent for six months, but with the intention of returning, he will still be considered as residing there.'

"But this is only a presumption of law which may be rebutted by evidence. A man may reside in one place while his family are living in another. Thus, a man in a prison resides where the prison is, and not where his home is, the reason of which is probably that he is not supposed to have an *animus revertendi* when he cannot return at any time, if he desires it: (*Reg.* v. *Salford*, 3 Bit. & Par. New Mag. Cas. 5)

"So a man may have two or more residences, as where he has a town house and country house, living occasionally at either. In the case of *R.* v. *North Curry* (4 B. & C. 953), BAILEY, J., said 'The question is, what is the meaning of the word '*resides?*' I take it that the word, where there is nothing to show that it is used in a more extensive sense, denotes the place where an individual eats, drinks and sleeps, *or*, where his family or his servants eat, drink and sleep.'

"'The word *residence* must be read in the sense of a man's *home*,' per POLLOCK, C. B. 'It means domicile or home.' PARKE, B. (*Lambe* v. *Smythe*, 15 L. J. (N.S.) 267, Ex.)"

What a place of business.

363. *What a Place of Business.*—Where a man has one place of business which he is in the habit of frequently attending, service by leaving the summons at such place is undoubtedly sufficient; but if, instead of one place of business, he has various offices in different districts, it may often be difficult to ascertain what facts are sufficient to constitute such a place of business as is contemplated by the rule.

Sibley v *The Great Western Railway Company* (1 C. C. Chron. 241.)

Mr. CARROW, Judge of the Somersetshire Court, held, in the case of *Sibley* v. *The Great Western Railway Company* (1 C. C. Chron. 241), that each railway station is a place of business of the railway company. So, if a solicitor has two offices, or a tradesman two shops, in different towns, both offices and both shops must be considered as the places of business of the solicitor and of the tradesman respectively. Mere

temporary offices, however, or premises hired as places of business for particular occasions, would not be such places of business as the act contemplates.

IV. Summons out of the Jurisdiction.

Summons out of the jurisdiction.

Section 60 enacts that, "by leave of the Court for the district in which the defendant, or one of the defendants, shall have dwelt or carried on his business, at some time within six calendar months next before the time of the action brought, or in which the cause of action arose, such summons may issue in either of such last-mentioned Courts."

364. *Foreign Summons.*—The plaintiff is entitled, as of right, to a summons in the district where the defendant at the time dwells or carries on his business, and the Clerk of the Court is bound, on application being made to him, to enter the plaint. But in all other cases it is only by leave of a Judge sitting in Court (*a*) that a plaint may be entered or a summons may issue.

In order to give the Judge jurisdiction to grant leave to issue a summons out of the district it is necessary—

1st. That the defendant should have lived within the district of the Court in which the application is made within six months next before the time of the action brought. Or,

2nd. That the defendant should have carried on his business within such district within six months next before the time of the action brought. Or,

3rd. That the cause of action should have arisen within the district.

Should a Judge grant leave to issue a summons in cases where neither of the above requisites are present, such leave would be a mere nullity, and the proceedings consequent thereto would be *coram non judice* and void.

In order to give a Judge jurisdiction to grant leave, on the ground of the cause of action having arisen within the district, it must appear that the cause of *Hale v. Evans* (1 C. C. Chron. 337.)

(*a*) The Judge of the Caermarthenshire Court, in the case of *Prothero* v. *Prothero*, held that to grant leave is a judicial act of the Judge, and must be done in each case by the Judge sitting in Court.

action did arise *wholly* within the district, and if it has arisen partly within another district, such leave cannot be granted. This construction of the section was adopted by the Judge of the Caermarthenshire Court, in the case of *Hale* v. *Evans and another* (1 C. C. Chron. 337.)

To grant leave discretionary in the Judge.

In cases where a Judge *may* grant leave to issue a summons out of the district, it seems to be discretionary with him whether or not he shall grant such leave; for, if it had been intended not to allow the

Duty of the Judge as to summons out of district.

Judge any discretion in granting or refusing leave to issue a summons, it would have been superfluous to make such leave necessary, as it can be no protection to the plaintiff to obtain the leave of a Judge except so far as it is made necessary by the act. And if the Judge grant leave when he has no power to do so, the plaintiff will be liable in trespass, the same as if such leave had not been obtained.

Proper discretion must be used.

But the Judge is bound to exercise a legal and proper discretion and to consult the convenience of both parties, and not to give undue advantage or to cause unnecessary inconvenience to either party by granting or refusing such leave. If, for instance, the effect of granting such leave would be to cause the defendant and the witnesses required in the cause to come from a great distance to attend the trial, and thus incur unnecessary expense and trouble, it would be unreasonable in such case to grant leave, and the plaintiff ought to be left to his natural remedy against the defendant in the Court of the district where he resides. (*a*) (See *ante*, p. 185, *et seq*. note *a*.)

Practice as to granting leave.

The practice as to granting leave varies in the different County Court districts. In some, an application *vivâ voce* has been held sufficient, whilst in others an affidavit or declaration has been required. For instances, see 1 C. C. Chron. 3, 6, 28, 63, 241. The most convenient and safe practice would seem to be, to require an affidavit or declaration containing an allegation of such facts as are necessary

(*a*) The Judge of South-West Wales has made it a rule in the Courts over which he presides that if the witnesses are resident within the district of the Court where the application is made, or if the costs of the trial will be less if the action be tried in such district than they would be if it be tried in the district where the defendant resides, leave will be given to issue the summons, but not otherwise: (1 Cox & Macrae, 33.)

to give the Court jurisdiction to grant leave in each particular case, and it would be desirable if all the Judges were to agree upon some uniform mode of proceeding in this respect.

The following may be the form of the affidavit:—

FORM OF AFFIDAVIT FOR SUMMONS OUT OF THE JURISDICTION.

No.

In the County Court of at

A. B. of in the county of maketh oath and saith, that one C. D. is indebted to him, the said A. B. in £ being the amount agreed to be paid for certain goods sold and delivered by the said A. B. to the said C. D. on the day of A.D. at in the county of . And this deponent further saith, that the said C D. has within six months last past, to wit, up to the day of been residing within the district of the said County Court, but that the said C. D. now resides out of the said district, to wit, at in the county of . And this deponent further saith, that it would occasion him, this deponent, great inconvenience and unnecessary expense to sue the said C. D. for the said debt in the Court of the district wherein the said C.D. at present resides. And this deponent further saith, that the said debt may be more conveniently and at less expense sued for in the Court of the said district than in the Court of the district where the said C. D. at present resides. Affidavit.

A. B.

Sworn, &c.

Where the ground of the application is, that the defendant had been carrying on his business in the district within six months before action brought, or that the cause of action had arisen within the district, the above form should be varied so as to meet such facts.

The application must, as we have seen, be made to a Judge sitting in Court, who will either grant or refuse the application. Application to a Judge in Court.

If the application be granted, the Clerk should draw out "leave," which may be in the following form:

Book VI. The Practice.

Cap. 2. Summons and Particulars.

Form of Leave.

Form of leave.

No.

In the County Court of *at*

(Seal.)

Between { *A. B., Plaintiff,* *and* *C. D., Defendant.* }

Upon reading the (*a*) *plaint in this action, and the affidavit of the said plaintiff, and it appearing to the Court here* [*that the cause of action in the said plaint mentioned hath arisen,* or *that the said defendant, or C. D. one of the said defendants, hath dwelt* or *carried on his business, within six calendar months next before the commencement of this action,*] *within the district of this Court, and it appearing thereupon to be right and proper that the said action should be tried in this Court: it is therefore ordered by the Judge of the said Court that leave be given, and leave is hereby accordingly given, that a summons may issue in and from this Court, at the suit of the said plaintiff against the said defendant for the cause of action in the said plaint mentioned.*

Given under the seal of the Court, this *day of* *A.D.* .

By the Court,

Clerk.

V. Service of Summons out of the District.

This is provided for by sects. 61 and 62, as follows:

Section 61.

Processes out of district of court may be served by Bailiff of any other court.

Sect. 61. And be it enacted, that any summons or other process which under this Act shall be required to be served out of the district of the Court from which the same shall have issued may be served by the Bailiff of any Court holden under this

(*a*) It seems that the plaint must be first entered, and the application for a summons based on such plaint. The 59th section directs the Clerk of the Court, in general terms, to enter a plaint "on the application of any person desirous to bring a suit under this act;" and further directs that "thereupon a summons shall be issued." Section 60 proceeds to enact that, in certain cases, such summons may issue only by leave of the Judge, but both this section and the foregoing evidently contemplate a summons issuing upon a plaint already entered, and it seems that, until the plaint is entered, no question can arise as to the summons.

Act in any part of England, and such service shall be as valid as if the same had been made by the Bailiff of the Court out of which such summons or other process shall have issued within the jurisdiction of the Court for which he acts.

Proof of service of process out of the district or in the absence of the bailiff.

Sect. 62. And be it enacted, that service of any summons or other process of the Court which shall require to be served out of the district of the Court may be proved by affidavit, purporting to be sworn before any Judge of a County Court, or before a Master Extraordinary in Chancery, or any person now authorized by law to take affidavits; and the fee for taking such affidavit shall not be more than one shilling, and shall be costs in the cause; and in every case of the unavoidable absence of the Bailiff by whom any summons or other process of the Court shall have been served the service of such summons or other process may be proved, if the Judge shall think fit, in the same manner as a summons served out of the district of the Court, but without additional charge to either of the parties to the suit.

General rules applicable.

The general rules as to the service of summonses will equally apply to summonses served in a foreign district.

The following is the form of the

AFFIDAVIT OF SERVICE OF FOREIGN SUMMONS.

No.

In the County Court of *at*

Between { *A. B., Plaintiff,* *and* *C. D., Defendant.* }

Affidavit of service of foreign summons.

E. F. of *one of the Bailiffs of the County Court of* *maketh oath and saith, that the summons* [or other process] *a true copy whereof is hereunto annexed, marked* *at* *within the jurisdiction of the said County Court of* *by delivering the same personally to the said C. D.* [If the service was not personal state how served.]

Sworn before me, &c. the *day of*

[Indorse the summons or other process "this paper marked A. is the paper referred to in the annexed affidavit."]

Book VI. The Practice. — Cap. 2. Summons and Particulars. — Lawrence v. Jenkins.

Where a summons out of the district is not served personally, the affidavit must state that it was left at the place of abode, or place of business of the defendant: (*Lawrence* v. *Jackson*, 2 C. C. Chron. 265.)

V. Fresh Summons in order to save the Statute of Limitations.

It sometimes happens that the Statute of Limitations would operate upon the debt or demand if a summons should not be served. Provision has been made for this by the following rules:

Rule 12. — Successive summonses may issue to save the statute.

Rule 12. Where any such summons has not been served as hereinbefore directed, the Judge may, in his discretion, in order to save the Statute of Limitations, direct another summons, or successive summonses to be issued, bearing the same date and number as the first summons.

Rule 14. — Rules to apply to service of all process.

Rule 14. The above rules, except rule 11, as to the mode of service of summonses to appear to a plaint, shall apply to the service of all summonses, judgments, orders, notices, and process whatsoever, issuing under the authority of the said Act, except where otherwise directed by the said Act, or any rule made under the authority thereof.

Explanation of the 12th rule.

The entry of the plaint seems to be the commencement of an action in the County Court, and the summons is in the nature of a declaration or a full notice of the plaint to the defendant. The summons must, however, as has been already seen, be in accordance with certain rules, and if there be any material defect in the summons, the Judge is bound to dismiss it or to nonsuit the plaintiff. In ordinary cases the plaintiff may abandon his plaint and bring a fresh suit, but in some cases the effect of this course of proceeding would be to make the Statute of Limitations a bar to the action. It was to obviate this inconvenience that the 12th rule was made. By that rule, the Judge is enabled, whenever a summons or other proceeding is informal or has not been served, to order a new summons, &c., to issue bearing the same date and number as the previous summons, &c.

The words of the rule are, "Where any such summons has not been served *as hereinbefore directed.*"

Foster v. Temple.

It would appear, therefore, that not only a total omission to serve the summons, but also any irregularity on account of which the summons is dismissed is sufficient to give the Judge that power. This seems to be the construction adopted by the Court of Queen's Bench in the case of *Foster and another* v. *Temple* (17 L. J. 230, Q. B.; 1 Cox & Macrae, 185.) In that case, the Judge of the Court below, after having dismissed the original summons for irregularity, directed a fresh summons to issue in order to save the Statute of Limitations. The defendant applied for a prohibition, on the ground that, as a summons had once been served, the Judge had no power to direct a fresh summons to issue. The Court, however, held that the first summons having been dismissed for irregularity, it amounted to a nullity, and that the Judge had consequently acted within his jurisdiction in granting a fresh summons.

CAP. III.

PROCEEDINGS BETWEEN THE SERVICE OF THE SUMMONS AND THE HEARING.

I. Notice of Special Defences.

Book VI. THE PRACTICE.

The statute has expressly provided that notice shall be given of any special defence, thus:

Cap. 3. *Proceedings between the Summons and Hearing.*

Section 76.

Notices to be given to the Clerk of special defences, who shall communicate the same to the plaintiff.

Sect. 76. And be it enacted, that no defendant in any Court holden under this Act shall be allowed to set off any debt or demand claimed or recoverable by him from the plaintiff, or to set up by way of defence and to claim and have the benefit of infancy, coverture, or any Statute of Limitations, or of his discharge under any statute relating to bankrupts, or any act for relief of insolvent debtors, without the consent of the plaintiff, unless such notice thereof as shall be directed by the rules made for regulating the practice of the Court shall have been given to the Clerk of the Court; and in every case in which the practice of the Court shall require such notice to be given the Clerk of the Court shall, as soon as conveniently may be, after receiving such notice, communicate the same to the plaintiff by the post, or by causing the same to be delivered at his usual place of abode or business; but it shall not be necessary for the defendant to prove on the trial that such notice was communicated to the plaintiff by the Clerk.

And the following rules have regulated the manner of giving it.

Rule 17.

As to set-off.

Rule 17. Where a defendant desires to set off any debt or demand alleged to be due to him by the plaintiff, he must give notice thereof in writing to the Clerk of the Court, and deliver to such Clerk two copies of a statement of the particulars of such set-off five clear days before the return of the summons.

Rule 18. The Clerk of the Court shall give to the plaintiff a notice of such set-off, according to the form in the schedule, in manner directed by the Act, together with one of the copies of such particulars of set-off, sealed with the seal of the Court: provided always, that where such notice shall not have been given, the Judge, in his discretion, and on such terms as he shall think fit, may adjourn the hearing of the cause, to enable the defendant to give such notice such number of days before the day to which the hearing may be adjourned, as the Judge shall think proper.

Rule 18. — Notice of set-off.

Rule 19. Where a defendant intends to rely on the special defence of infancy, coverture, the Statute of Limitations, or his discharge under any statute relating to bankrupts, or any act for the relief of insolvent debtors, he shall give notice thereof in writing to the Clerk of the Court, five clear days before the day on which the summons is returnable: provided always, that where such notice shall not have been given, the Judge, in his discretion, and on such terms as he shall think fit, may adjourn the hearing of the cause, to enable the defendant to give such notice such number of days before the day to which the hearing may be adjourned, as the Judge may think proper.

Rule 19. — Defence of infancy, coverture, Statute of Limitations, bankruptcy, or insolvency.

The Special Defences here enumerated are the following, viz.:—

Special defences.

1. Set-off.
2. Infancy.
3. Coverture.
4. Statute of Limitations.
5. Bankruptcy.
6. Insolvency.

365. *Five Days' Notice.*—With respect to these the rule is, that to entitle the defendant to make use of either as a defence, it is necessary that five clear days' notice be given.

Five days' notice.

This rule is imperative in all cases, except where the plaintiff consents to waive the notice.

366. *The Judge may adjourn, &c.*—The Judge may, however, adjourn the case in order to enable the defendant to give the required notice.

The Judge may adjourn, &c.

367. "*Five Clear Days.*"—The "five clear days"

"Five clear days."

Book VI. THE PRACTICE. — Cap. 3. Proceedings between the Summons and Hearing.

are to be reckoned exclusive of the first and last days: (Chitty's Archbold, 8th ed. p. 130).

The following may be the forms of notices of special defences:

Form of notice of set-off.

NOTICE OF SET-OFF.

No.

In the County Court of *at*

Between { *A. B., Plaintiff,* *and* *C. D., Defendant.* }

Take notice, that at the hearing of this cause I will claim a set-off against any debt or demand that may be proved against me by the plaintiff in the above action.

C. D., Defendant.

To *the Clerk of the said Court.*

And the particulars of set-off may be thus:

Form of particulars of set-off.

No.

In the County Court of *at*

Between { *A. B., Plaintiff,* *and* *C. D., Defendant.* }

The following are the particulars of the defendant's set-off in this action:

[Here set out the account.]

C. D, Defendant.

Dated

Form of clerk's notice of set-off.

CLERK'S NOTICE OF SET-OFF.

No.

In the County Court of *at*

(Seal.)

Between { *A. B., Plaintiff,* *and* *C. D., Defendant.* }

The above-named defendant has given notice that he will, at the hearing of this cause, claim a set-off against any debt or demand that may be proved against him by you, and the particulars of such set-off are hereunto annexed.

Given under the seal of the Court, this *day of*

Clerk of the said Court.

To the above-named plaintiff.

NOTICE TO THE CLERK OF OTHER SPECIAL DEFENCES.

Notice to clerk of special defences.

No.

In the County Court of at

Between { *A. B., Plaintiff, and C. D., Defendant.* }

Take notice that I, the said defendant, do, upon the hearing of this cause, intend to set up by way of defence, that I was an infant within the age of twenty-one years, when the supposed contract was made. Infancy.

Or, *that I was, at the time of making the supposed agreement, the wife of* Coverture.

Or, *that the claim contained in the summons is barred by the Statute of Limitations.* Statute of Limitations.

Or, *that I am a certificated bankrupt, and obtained my certificate before the commencement of this suit.* Bankruptcy.

Or, *that I was duly discharged under an act for the relief of insolvent debtors, before the commencement of this suit.* Insolvency.

C. D., Defendant.

To the Clerk of the Court.

CLERK'S NOTICE OF SPECIAL DEFENCES.

Clerk's notice of special defences.

No.

In the County Court of at
(Seal.)

Between { *A. B., Plaintiff, and C. D., Defendant.* }

Take notice, that the defendant intends, upon the hearing of this cause, to give in evidence and rely upon the following ground of defence to the action, viz.:—That he, the defendant, was an infant within the age of twenty-one years, when the supposed claim arose. Infancy.

Or, *that she, the defendant, was at the time when the said supposed contract was entered into, the wife of* Coverture.

Or, *that the claim for which he, the defendant, has been summoned, is barred by the Statute of Limitations.* Statute of Limitations.

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Or, *that the defendant is a certificated bankrupt, and obtained his certificate before the commencement of this suit.*

Or, *that the defendant was duly discharged under an act for the relief of insolvent debtors before the commencement of this suit.*

Bankruptcy. Insolvency.

Courts to be governed by the rules of practice of the Superior Courts in cases not provided for.

Evans v. James (1 C. C. Chron. 1.)

368. *As to Practice of the Courts.*—By the 78th section of 9 & 10 Vict. c. 95, it is enacted, that in any case not expressly provided for in that Act or the rules to be framed by the Judges, the general principles of practice in the Superior Courts of common law may be adopted and applied at the discretion of the Judges to actions and proceedings in their several Courts. Whether or not this provision would authorize the Judges to require a notice to be given of any special defence not enumerated in the 76th section, may admit of some doubt. The Judge of South-West Wales has, in the case of *Evans* v. *James and another* (1 C.C.Chron. 1), held the affirmative. That was an action on a promissory note. The defendant proposed to show want of consideration, but the plaintiff objected, on the ground that no notice had been given. The judgment was as follows:—"I am not bound by the specific rules of practice of the Superior Courts, nor by those of the County Court, part of whose jurisdiction has been turned over to this Court. The Judges have made no rules upon this point, and nothing is said about it in the Act. By the 78th section I am to do justice between the parties by applying in such cases the general principles of practice in the Superior Courts, according to my discretion. It is very difficult to apply the practice of the Superior Courts to this Court, because we have no pleadings here, but the principles of their practice I may apply. I am not to suppose any note put in evidence before me void for want of consideration, because it admits on its face to have been made for value received. Therefore, where the effect of such admission is sought to be done away with, I shall hold that notice must be given to the other side; and, adopting the principle of the 17th rule, I shall in all similar cases to the present require the defendant to give five clear days' notice of his intention to dispute the consideration to the party who is to be affected by it, and have such notice proved at the trial; and,

unless such notice is given, I shall not call upon the party to prove consideration, nor allow it to be contested. The better plan will be to adjourn this case, to allow such notice to be given."

II. Payment of Money into Court.

The defendant may pay into Court, five clear days before the return of the summons, such sum as he shall think a full satisfaction of the plaintiff's demand, together with the costs already incurred.

Section 82. Defendant may pay money into court.

Sect. 82. And be it enacted, that it shall be lawful for the defendant in any action brought under this Act, within such time as shall be directed by the rules made for regulating the practice of the Court, to pay into Court such sum of money as he shall think a full satisfaction for the demand of the plaintiff, together with the costs incurred by the plaintiff up to the time of such payment; and notice of such payment shall be communicated by the Clerk of the Court to the plaintiff by post, or by causing the same to be delivered at his usual place of abode or business; and the said sum of money shall be paid to the plaintiff; but if he shall elect to proceed, and if the plaintiff shall recover no further sum in the action than shall have been so paid into Court, the plaintiff shall pay to the defendant the costs incurred by him in the said action after such payment; and such costs shall be settled by the Court, and an order shall thereupon be made by the Court for the payment of such costs by the plaintiff.

Notice of such payment to be given to plaintiff.

Rule 15. When money to be paid into court

Rule 15. Where the defendant pays money into Court, the same must be paid into Court five clear days before the return of the summons.

Notice of payment of the whole claim.

Notice of Payment of the whole Claim.

No.

In the County Court of *at*

(Seal.)

Between { *A. B., Plaintiff, and C. D., Defendant.*

I do hereby give you notice, that the above-named defendant has paid into Court the sum of £ being the full amount of

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your demand in this action, together with the costs incurred by you therein.

Given under the seal of the Court, this day of 18 .

Clerk of the said Court.

To the above-named plaintiff.

NOTICE OF PAYMENT OF PART OF THE CLAIM INTO COURT.

Notice of payment of part of claim into court.

No.

In the County Court of at .

(Seal)

Between { *A. B., Plaintiff,* *and* *C. D., Defendant.* }

Take notice, that the sum of £ has been paid into Court by the above-named defendant, together with the sum of £ for the costs incurred by you up to the time of such payment; and in case you shall accept the same in full satisfaction of your demand, you must give a written notice to that effect to the Clerk of the Court, and a like notice to the said defendant, by serving the same on him personally, or by leaving it at his place of abode or business, three clear days before the day of trial, otherwise you will be liable to pay to the said defendant such costs as he may incur in this action after payment into Court, as aforesaid.

Given under the seal of the Court, this day of 18 .

Clerk of the Court.

To the above-named plaintiff.

369. *Acceptance by Plaintiff of Money paid into Court.*—If the plaintiff elect to accept the money paid into Court in full satisfaction of debt and costs, and shall give notice thereof to the Clerk of the Court and to the defendant three clear days before the return of the summons, further proceedings shall be stayed.

Rule 16. — Acceptance of money paid into court.

Rule 16. If the plaintiff elect to accept in full satisfaction of the debt or damages claimed, such part thereof as shall have been paid into Court by the defendant, and shall give a written notice to that effect to the Clerk of the Court, and a like notice to the defendant by serving the same on such defendant personally or leaving it at his place of abode or business, three clear days before the return of the summons,

the action shall be discontinued, and the plaintiff shall not be liable to any further costs. But in default of giving such notice, the suit will proceed; and, if the plaintiff do not appear at the hearing, he shall be liable to pay to the defendant such costs as he may incur in appearing to try the cause, or such other sum of money as the Judge may order.

The following may be the form of

Notice of plaintiff's acceptance of money paid into court.

NOTICE OF PLAINTIFF'S ACCEPTANCE OF MONEY PAID INTO COURT IN FULL SATISFACTION, &c.

No.

In the County Court of at

Between { *A. B., Plaintiff,* *and* *C. D., Defendant.* }

I hereby give you notice, that I shall accept the sum of £ paid into Court in this action by the defendant in full satisfaction of the debt [or *damages*] *claimed by me. Dated, &c*

A. B., Plaintiff.

To the Clerk of the said Court.

And the following is the form of

Notice of acceptance by plaintiff to defendant.

NOTICE TO BE SERVED BY THE PLAINTIFF ON THE DEFENDANT.

No.

In the County Court of at

Between { *A. B., Plaintiff,* *and* *C. D., Defendant.* }

I hereby give you notice, that I shall accept the sum of £ paid into Court in this action by you in full satisfaction of the debt [or *damages*] *claimed by me. Dated, &c.*

A. B., Plaintiff.

To C. D., Defendant.

If plaintiff goes on with action and

370. *Costs.* If the plaintiff, instead of accepting the money paid into Court in satisfaction, shall elect to pro-

fails, defendant to have his costs.

ceed, and if the plaintiff shall recover no further sum in the action than shall have been so paid into Court, the plaintiff shall pay to the defendant the costs incurred by him in the said action after such payment; and such costs shall be settled by the Court, and an order shall thereupon be made by the Court for payment of such costs by the plaintiff.

III. The Effect of Payment into Court.

Payment of monev into Court admits everything that the plaintiff must have proved in order to recover it: (*Dyer* v. *Ashton*, 1 B. & C. 4.) It is, however, only an admission that the plaintiff has a cause of action to the extent of the amount paid in, and not beyond that extent: (*Blackburn* v. *Scholes*, 2 Camp. 341.) Payment into Court, therefore, in an action on a promissory note, payable by instalments, is only an admission that money to the amount paid in was due on it, and does not bar the Statute of Limitations as to a further sum claimed on the same note: (*Reid* v. *Dickons*, 5 B. & Ad. 499.) It is, however, an admission of the making of the promissory note. If the action is brought on a special contract, payment into Court admits it; but if the demand is made up of several distinct items, the payment admits no more than that the sum paid in is due: (*Meager* v. *Smith*, 4 B. & Ad. 673; *Seaton* v. *Benedict*, 5 Bing. 32.)

Payment into Court is an admission of the plaintiff's right to sue in the Court in which the action is brought: (*Miller* v. *Williams*, 5 Esp. 19.)

It also admits the character in which the plaintiff sues (*Lipscombe* v. *Holmes*, 2 Camp. 441); and the character in which the defendant is sued: (*Lucy* v. *Walrond*, 3 New Ca. 841.)

Stevenson v. *Cooper* (1C.C. Chron. 214.)

Payment of money into Court being an admission of the jurisdiction and of a debt being due to that amount, it seems to follow that the money paid in cannot in any event be recovered back. This was held by Mr. Temple, Judge of the Staffordshire Court, in *Stevenson* v. *Cooper* (1 C. C. Chron. 214.)

At the hearing of that case, it appeared that an action for the same debt was pending in a Superior Court, which, the Judge decided, ousted the jurisdiction of the County Court. The Judge, however, held that as money had been paid into Court, the plaintiff was thereby concluded, and could not recover it back.

IV. Confession of Debt or Demand.

The new statute, 13 & 14 Vict. c. 61, ss. 9 and 10, has introduced a proceeding analogous to *cognovit* and *Judges' Orders* in the Superior Courts. They are as follow:

13 & 14 Vict. c. 61, s. 9. Agreement as to the amount of debts, &c. and conditions of payment.

Sect. 9. And be it enacted, that if the person against whom a plaint shall be entered in any County Court can agree with the person on whose behalf such plaint shall have been entered upon the amount of the debt or demand in respect of which such plaint shall have been entered, and upon the terms and conditions upon which the same shall be paid or satisfied, it shall be lawful for such persons respectively, in the presence of the Clerk or Assistant Clerk of the Court in which such plaint shall have been entered, or one of their Clerks respectively, or in the presence of an Attorney of one of the Superior Courts, to sign a statement of the amount of the debt or demand so agreed upon between such persons respectively, and of the terms and conditions upon which the same shall be paid or satisfied, such Clerk or Assistant Clerk shall receive such statement, and shall thereupon, upon proof by affidavit of the signature of the party, if such statement were not made in the presence of the Clerk or Assistant Clerk, enter up judgment for the plaintiff for the amount of the debt or demand so agreed on, and upon the terms and conditions mentioned in such statement; and such judgment shall to all intents and purposes be the same, and have the same effect, and shall be enforced and enforceable in the same manner, as if it had been a judgment of the Judge of the said Court.

10. If plaintiff or his attorney

Sect. 10. And be it enacted, that in every case where the plaintiff shall not appear, either by himself or his attorney,

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upon the day of the return of any summons for hearing, or at any continuation or adjournment of the said hearing, and the defendant shall appear either by himself or his attorney upon such day of hearing, continuation, or adjournment, it shall be lawful for the Judge to award to the defendant or to his attorney, by way of costs of his attendance and satisfaction for his trouble, such sum as the Judge in his discretion shall think fit; and the sum so awarded shall be recoverable from the plaintiff by such ways and means as any debt or damage ordered to be paid by the same Court can be recovered.

do not appear on day of hearing, costs may be awarded to defendant for his trouble and attendance.

The following forms for proceedings under the statute may be useful:

Confession of debt or demand.

CONFESSION OF DEBT OR DEMAND.

In the County Court of , *at*

Between { *A. B., Plaintiff,* *and* *C. D., Defendant.* }

I. C. D., the above-named defendant, do hereby confess and admit the debt [or *demand,* as the case may be] *in this action to the amount of £*

(*Signed*) *C. D., Defendant.*

Signed by the said C. D. on this day of in the presence of E. F. Clerk of the County Court of , [or, *an attorney of the Court of Queen's Bench at Westminster.*]

Witness, E. F.

Notice by Clerk of confession of debt or demand.

NOTICE BY CLERK OF CONFESSION OF DEBT.

In the County Court of , *at* .

No.

Between { *A. B., Plaintiff,* *and* *C. D., Defendant.* }

Sir,—I hereby give you notice that I have received from the above-named defendant a statement, whereby he confesses and admits the debt [or *demand*] *in this suit to the amount of £* .

And, take notice, that it will not be necessary for you to prove the said demand so confessed and admitted as afore-

said, but the Judge of the said Court will, at the next sitting thereof, whether you shall appear or not, upon due proof of the signature of the defendant, proceed to give judgment for the demand so confessed and admitted.

Yours, &c.,

E. F., Clerk.

To , the above-named Plaintiff.

Dated

CAP. IV.

THE HEARING.

The hearing.

The hearing may be either by the Judge alone, or by a Jury under the direction of the Judge. In all actions where the amount claimed shall exceed five pounds, either party may, at his discretion, on payment of the sum of five shillings, and on giving to the Clerk of the Court a notice in writing two clear days before the return of the summons, demand a Jury. In all other cases, the Judge may, at his discretion, direct that the action be tried by a Jury.

By the new statute 13 & 14 Vict. c. 61, s. 13, it is enacted:

If the court or a Judge at chambers make an order, the plaintiff to have costs.

Sect. 13. That if in any such action, whether there be a verdict in such action or not, the plaintiff shall make it appear to the satisfaction of the Court in which such action was brought, or to the satisfaction of a Judge at chambers upon summons, that the said action was brought for a cause in which concurrent jurisdiction is given to the Superior Courts by the hundred and twenty-eighth section of the said recited Act of the tenth year of Her Majesty, or for which no plaint could have been entered in any such County Court, or that the said cause was removed from a County Court by *certiorari*, then and in any of such cases the Court in which the said action is brought, or the said Judge at chambers, may thereupon, by rule or order, direct that the plaintiff shall recover his costs, and thereupon the plaintiff shall have the same judgment to recover his costs that he would have had if this Act had not been passed.

I. Hearing by a Jury.

This is provided for by sect. 70, as follows:

Section 70.

Actions may be tried by a Jury when parties require it.

Sect. 70. And be it enacted, that in all actions where the amount claimed shall exceed five pounds it shall be lawful for the plaintiff or defendant to require a Jury to be summoned to try the said action; and in all actions where the amount claimed shall not exceed five pounds, it shall be lawful for the Judge, in his discretion, on the application of either of the parties, to order that such action be tried by a Jury; and in every case

such Jury shall be summoned according to the provisions hereinafter contained: provided always, that the party requiring a Jury to be summoned shall give to the Clerk of the Court, or leave at his office, such notice thereof as shall be directed by the rules made for regulating the practice of the Court as hereinafter provided; and the said Clerk shall cause notice of such demand of a Jury, made either by the plaintiff or defendant, to be communicated to the other party to the said action, either by post, or by causing the same to be delivered at his usual place of abode or business; but it shall not be necessary for either party to prove on the trial that such notice was communicated to the other party by the Clerk.

Affidavit.

No.

In the County Court of *at*

Between { *A. B., Plaintiff,* *and* *C. D, Defendant.*

E. F., of *in the county of* *, gentleman. maketh oath and saith that the signature* *to the statement of confession of debt hereunto annexed, is the proper handwriting of C. D., the above-named defendant, and that the same was made in the presence of this deponent.*

Sworn at *in the county of* *this* *day of* , 1850, *before me,*

——.

Agreement for Conditions of Payment.

No.

In the County Court of *at*

Between { *A. B., Plaintiff,* *and* *C. D., Defendant.*

It is this day stated and agreed between the plaintiff and the defendant in this suit that the amount of the [*debt* or *demand*] *due to the said plaintiff is £* *, and that the terms and conditions on which the said sum of £* *is to be paid are as follows:*—[Here insert terms and conditions.] *Witness the hands of the parties this* *day of* 18 .

(*Signed*) *A. B., Plaintiff,*
C. D., Defendant.

Signed by the said *and* *, on this* *day of* *, in the presence of E. F., Clerk of the County Court of* [or, *an attorney of the court, &c.*, as the case may be.]

Witness, E. F.

The affidavit may be in the same form as above.

Book VI. The Practice. — Cap. 4. *The Hearing.*

371. *Demand of a Jury.* The practice is regulated by rule 20, thus:

Demand of jury. *Rule* 20.

Rule 20. Every notice of a demand of a Jury, where the debt or demand claimed shall exceed five pounds, must be made in writing to the Clerk of the Court, two clear days before the return of the summons.

Notice to be in writing. Notice by whom given. *Bailey* v. *Laycock* (1 C. C. Chron. 22).

It would seem that the notice must be given by the party demanding a Jury, and that a notice given by one party will not entitle the other to demand a Jury. This was so held by Mr. Addison, in the case of *Bailey and others* v. *Laycock* (1 C. C. Chron. 22), in the Lancashire County Court. In that case the defendant had given notice of a demand of a Jury, but the plaintiff had not; at the trial, the defendant abandoned his notice and demand, but the plaintiff applied that the case should be tried by a jury. The Judge held that the plaintiff could not demand a Jury, as he had not given notice to that effect.

The following may be the form of a

Notice to Clerk of demand of jury.

Notice of a Demand of a Jury.

No.

In the County Court of *at*

Between { *A. B., Plaintiff,* *and* *C. D., Defendant.* }

I do hereby give you notice, that I demand that a Jury may be summoned to try this plaint.

A. B.,
the above-named plaintiff, or *defendant.*

To *Clerk of the said Court.*

The following is the form provided in the schedule to the rules of the notice to be given by the Clerk to the opposite party:

Notice by Clerk of demand of jury.

Clerk's Notice.

No.

In the County Court of *at*
(Seal.)

Between { *A. B., Plaintiff,* *and* *C. D., Defendant.* }

Take notice, that the above-named cause will be tried by

a Jury, the above-named having demanded a Jury therein.

Clerk of the Court.

To , the above-named

The party applying for a Jury must, at the time of giving notice, deposit five shillings with the Clerk of the Court.

Deposit must be made.

Sect. 71. And be it enacted, that every party requiring any Jury to be summoned shall at the time of giving the said notice, and before he shall be entitled to have such Jury summoned, pay to the Clerk of the Court the sum of five shillings for payment of the Jury, and such sum shall be considered as costs in the cause, unless otherwise ordered by the Judge.

Section 71. Party requiring jury to make a deposit.

372. *The Jury.*—The Jurors to be summoned must be selected from among such persons resident within the district of the Court, as are qualified and liable to serve as Jurors in the Courts of Assize and Nisi Prius for their county, city, and borough respectively.

The enactment is as follows:

Sect. 72. And be it enacted, that the Sheriff of every county, and the High Bailiffs of Westminster and Southwark, shall cause to be delivered to the Clerk of the Court a list of persons qualified and liable to serve as Jurors in the Courts of Assize and Nisi Prius for their county, city, and borough respectively, within fourteen days from the receipt of the jury book from the Clerk of the Peace of the county or other officer, each list containing only the names of persons residing within the jurisdiction of the Court, for which list the said Sheriffs and High Bailiffs shall be entitled to receive out of the general fund of the Court a fee after the rate of two-pence for every folio of seventy-two words; and whenever a Jury shall be required the Clerk of the Court shall cause so many of the persons named in the list as shall be needed in the opinion of the Judge to be summoned to attend the Court at a time and place to be mentioned in the summons, and shall administer or cause to be administered to such of them as shall be impanelled to try any cause or causes an oath to give true verdicts according to the evidence; and the persons so summoned shall attend at the Court at the time mentioned in the summons, and in default of attendance shall

Section 72. Who shall be jurors.

forfeit such sum of money as the Judge shall direct, not being more than five pounds for each default; and the delivery of such summons to the person whose attendance is required on such Jury, or delivery thereof to his wife or servant, or any inmate at his usual place of abode, trading, or dealing, shall be deemed good service: provided always, that no person shall be summoned or compelled to serve on such Jury more than twice within one year, or who shall have been summoned and shall have attended upon any Jury at the Assizes, or any Court of Nisi Prius, or at the Central Criminal Court for the same county, within six calendar months next before the delivery of such summons.

The exemptions intended by the above section seem to have been, 1st, such as had already served twice on a Jury in the County Courts; and, 2ndly, such as had, within six months next before the delivery of the summons, attended on a Jury at the Assizes, &c. It is not, however, so clear what is the meaning of the actual provision. The words "no person shall be summoned or compelled," &c., cannot well apply to both the exceptions in the proviso. If the words, "more than twice within one year," or the word "or" were omitted, the meaning of the passage would be plain, but, as it now stands, the latter portion seems to be, according to strict construction, meaningless.

The following is the form of the

Summons to jurors.

SUMMONS TO JURORS.

No.

In the County Court of at

(Seal.)

You are hereby summoned to appear and serve as a Juror in this Court, at on the day of at the hour of , upon the trial of the several cases to be then and there tried by Juries; and in default of attendance you will be liable to a penalty of 5l. by the Statute of 9 *&* 10 *Vict. c.* 95,

Given under the seal of the Court, this day of 18

Clerk of the said Court.

To of

As to service of summons, see section 72.

The Jury must be five in number, and their verdict must be unanimous.

Verdict. Section 73. Number of the jury.

Sect. 73. And be it enacted, that whenever there are any Jury trials five Jurymen shall be impanelled and sworn, as occasion shall require, to give their verdicts in the causes which shall be brought before them in the said Court, and being once sworn shall not need to be re-sworn in each trial; and either of the parties to any such cause shall be entitled to his lawful challenge against all or any of the said Jurors in like manner as he would be entitled in any Superior Court; and the Jurymen so sworn shall be required to give an unanimous verdict.

Challenges to Jurors.

Challenges to Jurors are of two sorts, challenges to the array, and challenges to the poll: (3 Steph. Com. 596.)

A challenge to the array is an exception at once to the whole panel, and is generally on the ground of some default in the Sheriff, or on account of his being suspected of favouring either party.

Challenges to the polls are exceptions to particular Jurors, and are of four kinds: (Co. Lit. 156. b.)

1. *Propter honoris respectum*, as, if a Lord of Parliament be impanelled on a Jury, he may be challenged by either party.
2. *Propter defectum*, as, if a Juryman be an alien born, or a female, or has not the qualifications enumerated in 6 Geo. 4, c. 50.
3. *Propter affectum*, that is, for suspicion of bias or partiality.
4. *Propter delictum*, as, for some crime or misdemeanor that affects the Juror's credit, and renders him infamous.

If a challenge be disputed, the mode of trying it is by two indifferent persons called *triors*, and not by the Judge: (3 Steph. Com. 600.)

By section 69 it is provided that "no suitor shall be summoned to hold or have any jurisdiction in any Court holden under this act." It has been said that this provision has the effect of disqualifying suitors from being Jurors, but it is apprehended that the object of the enactment is to make the Judges appointed under the Act the sole Judges of the New County Courts, and to expressly exclude the suitors from all jurisdiction as Judges which they possessed in the ancient Courts Baron.

Functions of Judge.

373. *Functions of Judge.*—In trials by Jury the Judge exercises the same authority and performs the same functions as a Judge sitting at Nisi Prius.

II. Hearing by Judge alone.

In cases where there has been no demand of a Jury, the Judge alone is to determine all questions of law and fact.

This is provided for by section 69, thus—

Section 69.

Judge alone to determine all questions unless a jury be summoned.

Sect. 69. And be it enacted, that the Judge of the County Court shall be the sole Judge in all actions brought in the said Court, and shall determine all questions as well of fact as of law, unless a Jury shall be summoned as hereinafter mentioned; and no suitors shall in any case be summoned to hold or have any jurisdiction in any Court holden under this act.

As to the power of the Judge, see *ante*, p. 283.

374. *Proceedings on Hearing the Plaint when both Plaintiff and Defendant appear.*—These are regulated by,

Section 74.

Proceedings on hearing the plaint.

Sect. 74. And be it enacted, that on the day in that behalf named in the summons the plaintiff shall appear, and thereupon the defendant shall be required to appear to answer such plaint; and on answer being made in Court the Judge shall proceed in a summary way to try the cause, and give judgment, without further pleading or formal joinder of issue.

It has been also contended that this and other sections of the Act directing that the Judge shall proceed in a summary way to try the cause, applies only to trials by the Judge alone, and not to cases tried by a Jury. If section 74 stood alone, such a construction might with some show of reason be contended for, but if we look also to the 58th section it will appear that cases tried by a Jury, as well as those tried by the Judge alone, must be heard and determined in a summary way. The words of that section are "and *all* such actions brought in the said Court, shall be heard and determined in a summary way in a Court constituted under this Act," &c. From the context it will clearly appear that this pro-

vision is coextensive with the clause giving jurisdiction, and must therefore apply to all actions for the recovery of debt or damages over which the Court has jurisdiction.

375. *Trial when the Plaintiff does not appear to prove his case.*—If the plaintiff shall not appear, the cause shall be struck out, and if he shall appear, but shall not prove his case to the satisfaction of the Judge, the Judge may nonsuit the plaintiff, or give judgment for the defendant. If, however, the defendant admits the debt, the Judge may give judgment for the plaintiff.

Section 79. Proceedings if plaintiff does not appear or prove his case.

Sect. 79. And be it enacted, that if upon the day of the return of any summons, or at any continuation or adjournment of the said Court, or of the cause for which the said summons shall have been issued, the plaintiff shall not appear, the cause shall be struck out; and if he shall appear, but shall not make proof of his demand to the satisfaction of the Court, it shall be lawful for the Judge to nonsuit the plaintiff, or to give judgment for the defendant, and in either case, where the defendant shall appear and shall not admit the demand, to award to the defendant, by way of costs and satisfaction for his trouble and attendance, such sum as the Judge in his discretion shall think fit, and such sum shall be recoverable from the plaintiff by such ways and means as any debt or damage ordered to be paid by the same Court can be recovered: provided always, that if the plaintiff shall not appear when called upon, and the defendant, or some one duly authorized on his behalf, shall appear, and admit the cause of action to the full amount claimed, and pay the fees payable in the first instance by the plaintiff, the Court, if it shall think fit, may proceed to give judgment as if the plaintiff had appeared.

376. *Trial when the Defendant does not appear.*—If the defendant shall not appear or answer when called, the Judge may, upon due proof of service of the summons, proceed to hear the case in his absence. The Judge may, however, at any time afterwards, set aside any judgment so given in the absence of the defendant, or grant a new trial, as he may think fit.

Section 80. Proceedings

Sect. 80. And be it enacted, that if on the day so named in the summons, or at any continuation or adjournment of the

If the defendant does not appear.

Court or cause in which the summons was issued, the defendant shall not appear, or sufficiently excuse his absence, or shall neglect to answer when called in Court, the Judge, upon due proof of service of the summons, may proceed to the hearing or trial of the cause on the part of the plaintiff only, and the judgment thereupon shall be as valid as if both parties had attended: provided always, that the Judge in any such case, at the same or any subsequent Court, may set aside any judgment so given in the absence of the defendant, and the execution thereupon, and may grant a new trial of the cause, upon such terms, if any, as to payment of costs, giving security for debt or costs, or such other terms as he may think fit, on sufficient cause shown to him for that purpose.

Mr. TRAFFORD, Judge of the Birmingham Court, in one case (*Anon.*, 1 Cox & Macrae, 65,) refused to set aside a judgment obtained in the absence of the defendant's attorney, upon payment of the costs of the day, without a rule to show cause obtained on the production of a satisfactory affidavit.

Adams v. *Verrier.*

In the case of *Adams* v. *Verrier* (2 C. C. Chron. 157), in the Sheriff's Court, London, it was held that the plaintiff is bound to prove his debt though it be undisputed by the defendant.

III. HEARING GENERALLY.

1. ADJOURNMENT.

The Judge may grant time to either party to prepare his defence, and may also adjourn the case from time to time.

Section 81.

Judge may grant time.

Sect. 81. And be it enacted, that the Judge may in any case make orders for granting time to the plaintiff or defendant to proceed in the prosecution or defence of the suit, and also may from time to time adjourn any Court, or the hearing or further hearing of any cause, in such manner as to the Judge may seem fit.

The Judge may also in his discretion, and on such terms as he may think fit, adjourn the case in order to enable the defendant to give notice of a special defence.

Rule 18.

Judge may adjourn.

Rule 18. The Clerk of the Court shall give to the plaintiff a notice of such set-off, according to the form in the schedule, in manner directed by the Act, together with one of the copies of such particulars of set-off, sealed with the seal of the Court: provided always, that where such notice shall not have been given, the Judge, in his discretion, and on such terms as he shall think fit, may adjourn the hearing of the cause, to enable the defendant to give such notice such number of days before the day to which the hearing may be adjourned, as the Judge shall think proper.

Rule 19.

Notice in cases of special defence.

When not given judge may adjourn

Rule 19. Where a defendant intends to rely on the special defence of infancy, coverture, the Statute of Limitations, or his discharge under any statute relating to bankrupts, or any act for the relief of insolvent debtors, he shall give notice thereof in writing to the Clerk of the Court, five clear days before the day on which the summons is returnable: provided always, that where such notice shall not have been given, the Judge, in his discretion, and on such terms as he shall think fit, may adjourn the hearing of the cause, to enable the defendant to give such notice such number of days before the day to which the hearing may be adjourned, as the Judge may think proper.

The following may be the form of an

Order to adjourn proceedings.

ORDER TO ADJOURN PROCEEDINGS.

No.

In the County Court of at

Between { *A. B., Plaintiff,* *and* *C. D., Defendant.* }

It is ordered that the trial of this action be adjourned until , *upon* [here state the terms or conditions of the adjournment, if any.]

Given under the seal of the Court, this day of , 18 .

By the Court.

Clerk.

The following are some of the reported cases as to the grounds on which adjournments are granted, and they may be some assistance to the practitioner in similar cases.

Phillips v. *Williams* (1 C.C. Chron. 21.)

In *Phillips* v. *Williams* (1 C. C. Chron. 21), the Judge of South-West Wales declared that adjournment should only be allowed for causes which would induce the Superior Courts to grant them.

Jones v. *Davies* (1 C. C.Chron. 23.)

The same Judge, in *Jones* v. *Davies* (1 C. C. Chron. 23), said, that if parties do not take care to get their cases properly before the Court, no adjournment would be granted.

Philips v. *Stone* (1 C.C. Chron. 122.)

In the case of *Philips* v. *Stone* (1 C. C. Chron. 122), the same Judge declared that the Court will adjourn cases by consent without affidavit, and where there is more than one cause, will apportion the costs.

Jones v. *Bull* (1 C. C. Chron. 64.)

The Judge of the Birmingham Court, in *Jones* v. *Bull* (1 C. C. Chron. 64), said, that the Court would exercise its discretion as to granting the adjournment of a case, on the ground of omission to give notice of special defence.

Wise v. *Arnould* (1 C. C.Chron. 63.)

The Judge of the East Kent Court ruled, in the case of *Wise* v. *Arnould* (1 C. C. Chron. 63), that an application for an adjournment, on account of the absence of a material witness, should be grounded on an affidavit of facts, and not on a mere parol declaration on oath.

Bell v. *Underwood* (1 C. C. Chron. 6.)

In a case where the plaintiff and defendant only were examined, and their testimony appeared conflicting, Mr. WHARTON (Yorkshire) adjourned the case for the purpose of obtaining further evidence: (*Bell* v. *Underwood*, 1 C. C. Chron. 6.)

West v. *Collier* (1 C. C. Chron. 7.)

One case having been removed to a Superior Court because title had come in question, Mr. HILDYARD, Judge of the Leicestershire Court, adjourned two other cases in which the same question appeared to be involved, to await the decision of the Superior Court: (*West* v. *Collier*, &c. (1 C. C. Chron. 7.)

Symonds v. *Hartnell* (1C. C.Chron. 39)

The Judge of the Dorsetshire Court, in the case of *Symonds* v. *Hartnell* (1 C. C. Chron. 39), held, that the unavoidable absence of the plaintiff's attorney is not a sufficient ground for adjournment except on payment of the costs of the day.

Clough v. *Norton* (1 C. C. Chron. 6.)

Where the defendant had given a defective notice of a special defence, Mr. STANSFIELD (Yorkshire) adjourned the case in order that the notice might be amended: (*Clough* v. *Norton*, 1 C. C. Chron. 6.)

Bower v. *Baxter* (1 C. C. Chron. 7.)

The Judge of the Northamptonshire Court, in the case of *Bower* v. *Baxter* (1 C. C. Chron. 7), postponed the trial, because inspection of the contract on which

the action was brought, though demand had been made in writing, had been refused.

Hurnall v. *Danby* (1 C. C.Chron. 39.)

In the case of *Hurnall* v. *Danby* (1 C. C. Chron. 39), the Judge of the Cambridgeshire Court directed an adjournment because the notice of special defence had been too short.

Lynn v. *Hollingworth* (1 C. C. Chron. 125.)

In the case of *Lynn* v. *Hollingworth* (1 C. C.Chron. 125), Mr. KOE adjourned the case to the next court day, where the claimant had omitted to deliver to the Clerk of the Court the particulars and grounds of his claim, and ordered the claimant to pay the costs of the day. The same course was adopted by Mr. FRANCILLON in the case of *Grimes* v. *Boodle* (1 C. C Chron. 123.)

Grimes v. *Boodle* (1 C. C. Chron. 123.)

Morris v. *Johnson* (1 C. C. Chron. 23.)

Where a plaintiff's case had failed, and that a second time, through his not producing the necessary proof, the Judge of the South-West Wales District nevertheless granted an adjournment: (*Morris* v. *Johnson*, 1 C. C. Chron. 23.)

Llewellyn v. *Jones* (1 C. C. Chron. 239.)

Penny v. *Morgan* (9 L. T. 62.)

Tarlington v. *Parker* (9 L. T. 88.)

Where a party seeks an adjournment on the ground of the absence of a material witness whom he has neglected to subpœna, it is invariably on the terms of his paying the costs of the day: (*Llewellyn* v. *Jones* 1 C. C. Chron. 239, *Bristol;* see also *Penny* v. *Morgan*, 9 L. T. 62; and *Tarlington* v. *Parker*, 9 L. T. 88, *Warwickshire*.)

2. REFERENCE TO ARBITRATION.

Reference to arbitration.

Section 76 enacts that the Judge may, with the consent of both parties to the suit, order the same, with or without other matters within the jurisdiction of the Court, to be referred to arbitration.

As to the proceedings therein, see *post*.

3. COURSE OF PRACTICE AT THE HEARING.

Course of practice at the hearing.

We have already seen (*ante*, p. 427), that if the defendant does not appear, or if he neglect to answer when called upon in Court, the plaintiff must give due proof of the service of the summons, and it would appear from the words of the 80th section of the Act, that such proof is a condition precedent to the Judge having jurisdiction to try the case. What is due service, however, seems to be a question to be finally decided by the Judge of the County Court: (*Robinson*

v. *Lenaghan*, *ante*, p. 396.) If, on the other hand, the defendant appears and makes answer, he thereby admits the service and it will be unnecessary to prove it.

Right to begin.

377. *Right to begin.*—In the Superior Courts it is often a subject of inquiry whether the plaintiff or the defendant is to open the facts and the evidence to the Jury. But it may be doubtful whether in any case, except where the plaintiff does not appear, the defendant has a right to begin in the County Courts; for it would seem that the plaintiff can in no instance be entitled to a verdict in those courts without actually proving his case by evidence. In the new County Courts there are no pleadings, and therefore there can be nothing admitted on the record. Even notice of a special defence will not amount to an admission of the cause of action, and the burden of proof lies upon the plaintiff to prove his cause of action before the defendant can be called upon to prove his special defence.

We may, therefore, lay it down as a general rule that the right and the obligation to begin in the County Court rests with the plaintiff. The defendant may, however, by admitting the plaintiff's cause of action entitle himself to begin, and thus should the plaintiff produce any evidence in answer to the defendant's case the latter would have the general reply.

Right to reply.

378. *Right to reply.*—"In general, the party who begins has the right to the general reply, when the opposite party calls witnesses. Where the defendant brings evidence to impeach the plaintiff's case, and also sets up an entirely new case, which again the plaintiff controverts by evidence, the defendant's reply is confined to the new case set up by him; for upon that relied upon by the plaintiff the defendant's counsel has already commented in the opening of his case; and the plaintiff is then entitled to the general reply."

"Unless the defendant gives evidence, the plaintiff is not entitled to reply; there being no new facts upon which his counsel can comment:" (Roscoe's Nisi Prius, 6th ed. p. 179.)

Arguments of counsel.

379. *Arguments of Counsel.*—"When points of law arise incidentally, all the counsel on both sides are

usually heard by the Court; and the leading counsel of the party making the objection alone replies:" (Roscoe Nisi Prius, 179.)

Book VI. THE PRACTICE. Cap. 4. *The Hearing.*

380. *Addressing the Court or Jury and examining Witnesses.*—The Judges of the County Court have a discretion whether or not to allow counsel or attorney to argue any point for any party in those Courts; but if leave be once given, counsel will be entitled to the same rights and privileges that he enjoys in the Superior Courts. He may address the Court or Jury, as the case may be, and comment on the facts of the case, and he may claim the same licence in the examination of witnesses that counsel are entitled to in such cases at Nisi Prius.

Addressing the Court or Jury and examining witnesses.

4. Nonsuit.

The Judges of the County Courts are empowered, by section 79, to nonsuit the plaintiff or give judgment for the defendant, if the plaintiff shall not make proof of his demand to the satisfaction of the Court. And section 89 enacts, "that the Judge shall have power to nonsuit the plaintiff in every case in which satisfactory proof shall not be given to him entitling either the plaintiff or defendant to the judgment of the Court."

Nonsuit.

In cases tried by a Jury, the plaintiff may elect whether he will submit to a nonsuit, or go to the Jury: (*Watkins* v. *Towers*, 2 T. R. 281.) And it would seem that, even in cases tried by the Judge alone, the plaintiff is not bound to submit to a nonsuit, though, if he refuses, the Judge may give judgment for the defendant.

Watkins v. *Towers.*

The defendant cannot, after he has addressed the Jury and examined witnesses, insist on a ground of nonsuit: (*Roberts* v. *Croft*, 7 C. & P. 376.) But the plaintiff may elect to be nonsuited, even whilst the Jury are deliberating: (*Anderson* v. *Shaw*, 11 Moore, 44.)

Roberts v. *Croft.*

Anderson v. *Shaw.*

A nonsuit is not a bar to any other proceeding for the same subject-matter, and though the 89th section enacts generally, that every order and judgment of any Court, holden under the Act, shall be final between the parties, the same section excepts cases of nonsuit.

Nonsuit not a bar.

BOOK VI. THE PRACTICE. — *Cap.* 4. *The Hearing.* —

Should a plaintiff be dissatisfied with the ruling of the Judge, he may elect to be nonsuited, and afterwards commence a new action to be tried by a Jury, provided the cause of action be such as to entitle him to demand a Jury.

The Judge may award costs.

When the plaintiff is nonsuited, the Judge "may award to the defendant, by way of costs and satisfaction for his trouble and attendance, such sum as the Judge in his discretion shall think fit, and such sum shall be recoverable from the plaintiff by such ways and means as any debt or damage ordered to be paid by the said Court can be recovered:" (sect. 79.)

Order in case of nonsuit.

There being no form of orders expressly provided by the Judges for cases of nonsuit, it would appear that the following form was intended to be used in such case:

ORDER FOR JUDGMENT AGAINST PLAINTIFF FOR COSTS AND SATISFACTION TO DEFENDANT, AND FOR HIS COSTS OF SUIT.

No.

In the County Court of *at*

(Seal.) *Between* { *A. B., Plaintiff,* *and* *C. D., Defendant.* }

At a Court holden at *on the* *day of* *it was adjudged, that judgment should pass against the said plaintiff, and that the said plaintiff should pay the sum of £* *to the said defendant, by way of costs and satisfaction for his trouble and attendance in that behalf, and the further sum of £* *for his costs and charges by the said defendant about his suit in that behalf expended, amounting together to the sum of £* *on or before the* *day of* *. It is therefore ordered, that the said plaintiff do pay the same to the Clerk of the Court, at his office at* *on or before the* *day of*

Given under the seal of the Court, this *day of* 18 .

By the Court,

Clerk.

Office hours, from ten till four.

5. WITHDRAWING A JUROR.

Withdrawing a Juror.

At trials at Nisi Prius a Juror is sometimes withdrawn, or the Jury discharged, by consent, either for

the convenience of the parties or at the suggestion of the Judge. In such case each party pays his own costs, but the action is not thereby determined: (*Everett* v. *Youells*, 3 B. & Ad. 349.) If, however, a Juror is withdrawn on the understanding that no further proceedings are to be taken in the cause, the Court above will not generally allow any further proceedings to be taken: (*Harris* v. *Thomas*, 2 M. & W. 32; *Gibbs* v. *Ralph*, 14 M. & W. 804.)

It would appear to be competent to the parties to a suit in the County Court to withdraw a Juror, or discharge the Jury, by consent, and the effect of such a proceeding would be the same as in a Superior Court.

6. Verdict and Judgment.

Verdict and judgment.

In cases tried by a Jury the verdict is final as to facts in issue, and such verdict can only be affected by a new trial granted. A verdict once entered cannot be altered, either by the Judge or by any officer of the Court: (2 Co. Litt. 227, b; *Jones* v. *Jones*, 1 Cox & Macrae, 92.) In cases where the Judge decides questions of fact as well as of law, it would appear that he may alter his judgment at any time during the sitting of the Court on the same day on which his decision has been delivered, but he has no authority to alter his judgment after the rising of the Court, or in the absence of the parties. This was expressly decided by Mr. Justice Coleridge, in the case of *Jones* v. *Jones* (*ante*). In which case a prohibition was granted to restrain a Judge of the County Court from proceeding upon a judgment which appeared to have been altered after the rising of the Court. In that case his lordship said, "It is not now material to inquire whether or not the case was heard by a Jury; but if it was so heard, it is clear that the Judge had no power to alter the verdict; and if heard by the Judge alone, it appears that he made his decision in favour of the defendants, and it was entered in the book for that purpose in that way; it was therefore complete in their favour on that day. I do not mean to say but that a Judge might alter his judgment on the same day, during the sitting of the Court, but he can have no authority to alter it in his own chambers, and behind the back of the parties, after the Court has broken up."

Jones v. *Jones*

Judgment must be entered of record in the book of the Court, which is generally in a few words, and the Judge may thereupon make such orders for payment as the nature of the case will justify.

Judgment for the defendant. Effect of judgment.

381. *Judgment for the Defendant.*—The effect of a judgment for the defendant is to give to the defendant what the Judge may in his discretion think a sufficient compensation for his trouble and attendance; and it seems doubtful whether the Judge has in such a case any authority to apportion the costs between the parties, for section 88, which gives the Judge that power, does so only in cases *not otherwise provided for* by the act.

ORDER FOR JUDGMENT AGAINST PLAINTIFF FOR COSTS AND SATISFACTION TO DEFENDANT, AND FOR HIS COSTS OF SUIT.

No.

In the County Court of *at*

(Seal.)

Between { *A. B., Plaintiff,* *and* *C. D., Defendant.* }

Order for judgment against plaintiff.

At a Court holden at on the day of it was adjudged, that judgment should pass against the said plaintiff, and that the said plaintiff should pay the sum of £ to the said defendant, by way of costs and satisfaction for his trouble and attendance in that behalf, and the further sum of £ for his costs and charges by the said defendant about his suit in that behalf expended, amounting together to the sum of £ on or before the day of . It is therefore ordered, that the said plaintiff do pay the same to the Clerk of the Court, at his office at on or before the day of

Given under the seal of the Court, this day of 18 .

By the Court,

Clerk.

Office hours, from ten till four.

Judgment for the plaintiff.

382. *Judgment for the Plaintiff.*—The judgment for the plaintiff may be either general, to pay debt and costs, or to pay the debt, and costs to be divided.

ORDER UPON A JUDGMENT FOR THE PLAINTIFF FOR PAYMENT OF DEBT OR DAMAGES BY THE DEFENDANT.

No.

In the County Court of *at*

(Seal.)

Between { *A. B., Plaintiff,* *and* *C. D., Defendant.* }

Upon hearing this cause at a Court holden at *on the* *day of* *it is adjudged, that the said plaintiff do recover against the said defendant the sum of £* *for his debt* [or *damages by him sustained,*] *together with the costs of suit, amounting to the sum of £* . *And it is ordered, that the said defendant do pay the same to the Clerk of the Court at his office in* *on or before the* *day of* — Order upon Judgment for plaintiff.

Given under the seal of the Court, this *day of* 18 .

By the Court,

Clerk.

Attendance at the office from ten till four o'clock.

The like where there is an apportionment of the costs.

After the words in the order, *supra*, "*together with the costs of suit, amounting to the sum of £*" add; *but inasmuch as the said defendant is entitled to costs to the amount of £* *to be deducted from the said sum of £* *recoverable by the said plaintiff as aforesaid, it is ordered that the plaintiff do pay the sum of £* *(being the balance payable to the plaintiff after the deduction aforesaid), to the Clerk of the Court," &c.* — Where costs are apportioned.

383. *Payment by Instalments.*

Section 92. — Court may make orders for payment by instalments.

Sect. 92. And be it enacted, that the Judge may make orders concerning the time or times and by what instalments any debt or damages or costs for which judgment shall be obtained in the said Court shall be paid, and all such moneys shall be paid into Court, unless the Judge shall otherwise direct.

Rule 23. — Instalments, when due.

Rule 23. When any order is made for the payment of any debt, damages, costs, or other sum of money by instalments,

such instalments shall be payable at the office of the Clerk of the Court, at such periods as the Court shall order; and if no order be made, then the first shall become due at the expiration of one calendar month from the day of making the order, and every successive instalment at like periods of a calendar month from the day of the previous instalment becoming due.

ORDER UPON A JUDGMENT FOR THE PLAINTIFF, WHERE THE DEBT AND COSTS ARE PAYABLE BY INSTALMENTS.

No.

In the County Court of at

(Seal.)

Between { *A. B., Plaintiff, and C. D., Defendant.* }

Order on judgment for plaintiff in case of instalments.

Upon the hearing of this cause at a Court holden at on the day of it is adjudged, that the said plaintiff do recover against the said defendant the sum of £ for his debt [or *damages by him sustained*] *in a certain action, together with the costs of suit amounting to the sum of £ by instalments, the first instalment to be paid upon the day of . Such payments to be made at the office of the Clerk of this Court, at*

Given under the seal of the Court, this day of 18 .

By the Court,

Clerk.

Note.—*Office hours, from ten till four.*

CAP. V.

NEW TRIAL, SETTING ASIDE PROCEEDINGS, &c.

When judgment has been given for the plaintiff in the absence of the defendant, "the Judge in any such case, at the same or any subsequent Court, may set aside any judgment so given in the absence of the defendant, and the execution thereupon, and may grant a new trial of the cause, upon such terms, if any, as to payment of costs, giving security for debt or costs, or such other terms as he may think fit, on sufficient cause shown to him for that purpose:" (sect. 80.)

And sect. 89 further provides that he "shall also in every case whatever have the power, if he shall think fit, to order a new trial to be had upon such terms as he shall think reasonable, and in the mean time to stay the proceedings."

The following may be the

FORM OF A BOND AS A SECURITY FOR COSTS.

Bond as a security for costs.

Know all men by these presents, that we C. D. of , Carpenter, E. F. of Mason, F. G. of Ironmonger, are jointly and severally held and firmly bound to A. B. in the sum of pounds of lawful money of Great Britain, to be paid to the said A. B. his certain attorney, executors or administrators; for which payment well and truly to be made, we bind ourselves and each and every of us, our and each and every of our heirs, executors and administrators firmly by these presents, sealed with our seals.

Dated this day of in the year of the reign of Her Majesty Queen Victoria, and in the year of our Lord 18 .

Whereas a certain action was brought in the County Court of at before Esq., Judge, in which the said

BOOK VI. THE PRACTICE. — Cap. 5. New Trial, setting aside Proceedings.

A. B. was plaintiff, and C. D. defendant, and such proceedings were thereupon had, that judgment therein was given for the said A. B. And whereas afterwards upon the application of the said C. D., the said judgment so given was set aside, and a new trial granted (upon payment of costs by the said C. D., and upon executing his bond, with two sufficient sureties, to the said A. B., conditioned that the said C. D. should pay the debt and costs which might be recovered by the said A. B. in such new trial, and to satisfy any judgment the said A. B. should obtain therein. Now the condition of the obligation is such, that if the said C. D. shall pay the debt and costs as shall be recovered by the plaintiff in such new trial, and shall satisfy the judgment to be obtained for the same, then this present obligation shall be void, or otherwise remain in full force and effect.

Signed, sealed and delivered *C. D.* (L.S.)
in the presence of *E. F.* (L.S.)
F. G. (L.S.)

If the application for a new trial be made subsequently to the Court at which the trial has been had, the party applying must give seven clear days' notice of his intention to the Clerk.

Rule 21. Notice of new trial.

Rule 21. No application for a new trial, or to set aside any proceedings, shall be made subsequently to the Court at which such trial or other proceeding shall have been had, unless the party making such application shall have given a written notice thereof to the Clerk of the Court at his office, and to the other party, by serving the same personally on such party, or leaving the same at his usual place of abode or business, seven clear days before the time of holding the Court at which such application shall be made.

ORDER FOR A NEW TRIAL.

No.

In the County Court of *at*

(Seal.)

Between { *A. B., Plaintiff,* *and* *C. D., Defendant.* }

Order.

It is ordered, that the judgment in this case, and all subsequent proceedings thereon, be set aside, and a new trial had

between the parties on [set out the terms or conditions, if any, on which the order is made.]

Given under the seal of the Court, this day of 18 .

By the Court,

Clerk.

ORDER TO RESCIND A FORMER ORDER.

No.

In the County Court of at

(Seal.)

Between { *A. B., Plaintiff,* *and* *C. D., Defendant.* }

Order to rescind former order.

It is ordered, that a certain order of this Court in this action, bearing date the day of be rescinded.

Given under the seal of the Court, this day of 18 .

By the Court,

Clerk.

ORDER TO STAY PROCEEDINGS.

No.

In the County Court of at

(Seal.)

Between { *A. B., Plaintiff,* *and* *C. D., Defendant.* }

Order to stay proceedings.

It is ordered, that all further proceedings in this action be stayed.

Given under the seal of the Court, this day of 18 .

By the Court,

Clerk.

The Judge of the Warwickshire Court held it to be unnecessary that the notice of a new trial should state the causes on which it is sought: (*Anon.* C. C. Chron. 105.) And this practice seems fully to satisfy rule 21.

It has been held by several of the County Court Judges that every motion for a new trial should be made

BOOK VI. THE PRACTICE. — *Cap.* 5. *New Trial, setting aside Proceedings.*

on affidavits stating the grounds of the motion: (see *New Brewery* v. *Nicholson,* 1 C. C. Chron. 240, *Cumberland; Arthur* v. *Robins, ib., Devonshire; O'Neill* v. *Taylor, ib.* 17, *Lancashire; Hall* v. *Evans, ib.* 380; *Carmarthenshire.*)

Anon. (1 C.C. Chron. 39.)

The Court has power to grant a new trial in a case where the defendant has appeared as well as in other cases, though Mr. HARWOOD, Judge of the Kent Court, held otherwise in an anonymous case: (1 C. C. Chron. 39.) The words of section 89 are explicit that the Judge "shall in *every case whatever* have the power, if he shall think fit, to order a new trial," &c.

Whether the Judge in granting a new trial can at the same time direct the new trial to be heard before a Jury in a case where the first trial has taken place before the Judge alone seems very doubtful. It is clear that neither party to the suit can demand a Jury unless he has given notice of such demand in writing to the Clerk of the Court two clear days before the *return of the summons.* Whether the Judge has power to direct a case to be tried by a Jury otherwise than on the application of either party, or whether he may in particular cases dispense with the rule requiring notice, are points not easy to determine. The question was raised before Mr. Justice COLERIDGE in the Bail Court in *Sparrowe* v. *Reed* (1 Cox & Macrae, 166), but that case was decided on another point. (*a*)

Sparrowe v. *Reed.*

(*a*) In the case of *Jones* v. *Jones,* in the Merionethshire Court (1 C. C. Chron. 266), a question of some importance was raised, viz., whether the Judge of a County Court has power to grant a new trial after a writ of prohibition had issued to restrain further proceedings in the action, the ground on which the prohibition had been granted being that the former judgment had been irregularly obtained. That learned Judge decided that he had power to grant a new trial, and thus expressed himself: "As the learned Judge has come to the conclusion that my judgment was irregularly pronounced, and the ground of the prohibition was the irregularity of the judgment itself and nothing else, and it was not questioned by his lordship that the facts would have warranted me in deciding in favour of the plaintiff, had I done so in a regular manner, I consider the plaintiff to be clearly entitled at my hands to a new trial," &c.

It is evident, however, that the Judge of an Inferior Court can only do what is not prohibited by the terms of the writ of prohibition, and that he has no right whatever to inquire into the reasons for which the writ has been granted. The Judge is bound to obey what the writ orders, and if the terms of the writ be general to restrain further proceedings in the action, it is evident that no new trial can be granted. If the writ is too general in its terms, or has issued improvidently, the remedy is by an application to the Court from which the writ has issued: (see *Iveson* v. *Harris,* 7 Ves. 251; see also Lloyd on Prohibition, 69.)

General grounds for granting new trials.

The following are some of the general grounds for which new trials are granted in the Superior Courts: (see Chitty's Archbold, 8th ed. p. 1321.)

Misdirection or other mistake of the Judge; the improper discharge of a Jury; wrong nonsuit; improper admission or rejection of evidence; improperly allowing a party to begin; default or misconduct of an officer of the Court; default or misconduct of the Jury; perverse verdict; that the verdict is against evidence; that the damages are excessive; that the damages are too small; absence of counsel or attorney; default or misconduct of the opposite party, as for instance, in misleading the Jury; misleading or taking by surprise the opposite party; that no notice of trial had been given; default or misconduct of witnesses; perjury of witness; the discovery of fresh evidence that is material; that the examination of witnesses had been stopped; that one of several issues has been wrongly decided.

A new trial being the only means provided to remedy an improper verdict or an erroneous decision of a Judge, it would seem that it ought to be granted by the Judges of the County Courts, not only in all cases where a new trial will be granted in the Superior Courts, but also in some cases where the remedy in a Superior Court would be by motion in arrest of judgment, or writ of error. Mere technical errors, however, or irregularities which cannot affect the justice of the case, ought not to be held sufficient grounds for which to grant a new trial in the County Courts.

In cases within the extended jurisdiction of the County Courts, a Superior Court may on appeal order a new trial on such terms as it thinks fit. (See 13 & 14 Vict. c. 61, s. 14. Appendix.)

CAP. VI.

EVIDENCE.

384. *The Nature of Evidence.* Evidence, with regard to its nature, may be treated of under the following heads: Primary; Secondary; Presumptive; Hearsay; Admissions.

The nature of evidence.

I. Primary Evidence.

Primary evidence.

It is a general rule of law that the best evidence of which the nature of the case will admit must be given: (B. N. P. 293.) And the best, or primary evidence may be defined to be, that which is most direct and least liable to any chance of falsification or error. Thus a deed or other written instrument, by which certain rights are created, is the most direct evidence of such rights, and is not so liable to falsification or error as a copy would be. Where, therefore, a contract is reduced into writing, that writing becomes the best evidence of the terms which in a manner become identified with the writing. But if a fact exists independent of a written instrument, such, for instance, as the payment of money, other evidence may be given of that fact though there may be a memorandum of the fact in writing, as a receipt or the like: (*Rambert* v. *Cohen*, 4 Esp. 213.)

Rambert v. *Cohen*.

II. Secondary Evidence.

Secondary evidence.

Evidence of a secondary nature, and which supposes the existence of better evidence not produced, is inadmissible unless satisfactory reasons can be shown for the absence of more direct proof.

Secondary evidence is admissible, 1st. Where the nature of the primary evidence is such as to preclude the possibility or the easy practicability of its being produced. Thus, for instance, parol evidence of an inscription on a wall or monument is admissible: (*Mortimer* v. *M'Callam*, 6 M. & W. 68, 72.) And inscriptions on banners and the like may also be proved by parol: *R.* v. *Hunt*, 3 B. & A. 566.)

Mortimer v. *M'Callam*.

R. v. *Hunt*.

2ndly. Secondary Evidence is admissible if it appears that no better evidence exists. Thus if it is proved that a deed or other writing has been lost, secondary evidence of its contents will be admitted: (B. N. P. 254.)

3rdly. If any document be in the possession of the opposite party, secondary evidence may be given of its contents on its being proved that a notice to produce the original has been duly served. The refusal of a third party, however, who has the custody of an instrument, to produce it on *subpœna*, is not sufficient ground for admitting parol evidence: (*Jesus College* v. *Gibbs*, 1 You. & Coll. 156.) But if an attorney objects to produce a document in his possession on the ground of privilege or lien, secondary evidence of the contents of such document may be given: (*Marston* v. *Downes*, 1 A. & E. 31.)

Jesus College v. *Gibbs.*

Marston v. *Downes.*

385. *Notice to produce, when necessary.*—In order to admit secondary evidence, a notice to produce is in general necessary whenever a document is in the hands of the opposite party. But where, from the nature of the proceedings, the party in possession of the document has constructive notice that he will be charged with the possession, as in trover for a deed, no notice is necessary: (*How* v. *Hall*, 14 East, 274.) In general a notice to produce a notice is necessary: (*Kine* v. *Beaumont*, 3 B. & B. 288.) A party who has a document in Court at the trial is not bound to produce it, unless he has had notice to do so, and the opposite party cannot on that account give secondary evidence of its contents: (*Cook* v. *Hearn*, 1 M. & Rob. 201; *Bate* v. *Kinsey*, 1 C. M. & R. 38.)

Notice to produce when necessary.

How v. *Hall.*

Kine v. *Beaumont.*

Cook v. *Hearn.*

Bate v. *Kinsey.*

386. *Proof of Possession of Original.*—The notice to produce will be ineffectual without proof that the original is in the hands of the opposite party, and the degree of proof requisite will vary according to circumstances: (Roscoe N. P. 6.) Whether or not there is sufficient proof of possession is a question for the Judge, and the party charged with the possession may give evidence to negative that fact: (*Harvey* v. *Mitchell*, 2 M. & Rob. 366.)

Proof of possession of original.

Harvey v. *Mitchell.*

387. *Form of Notice.*—A notice to produce may be either in writing or by parol: (*Smith* v. *Young*, 1

Form of notice.

Smith v. *Young.*

Camp. 440.) The notice must be reasonably specified, so as sufficiently to point out the thing required to be produced: (Roscoe N. P. 8.)

Service of notice.

Houseman v. *Roberts.*

Hughes v. *Budd.*

388. *Service of Notice.*—Service of the notice may be either on the party or his attorney: (*Houseman* v. *Roberts*, 5 C. & P. 394; *Hughes* v. *Budd*, 8 Dowl. P. C. 315.)

Time of service.

389. *Time of Service.*—The notice must be served in sufficient time to enable the opposite party to comply therewith, and if the time be too short for such a purpose, the notice will be held bad: (Roscoe N.P. 9.)

Effect of notice.

Graham v. *Dyster.*

390. *Effect of Notice.*—The only effect of a notice to produce, in general, is to enable the party giving such notice to give secondary evidence of the contents of the instrument sought to be produced, and such evidence must be part of his own case: (*Graham* v. *Dyster*, 2 Stark. 23.)

What is sufficient secondary evidence.

Doe v. *Ross.*

391. *What is sufficient Secondary Evidence.*—If secondary evidence be admissible, such evidence may be either written or parol, and it is no objection to the admissibility of parol evidence of the contents of a document that there exists an examined copy of the same: (*Doe* v. *Ross*, 7 M. & W. 102.)

If the plaintiff has given the defendant notice to produce a document, and is obliged to give secondary evidence of it by the defendant's refusal to produce it, the defendant cannot afterwards produce it as part of his own case in order to contradict the secondary evidence: (*Doe* v. *Hodgson*, 12 A. & E. 135.)

Doe v. *Hodgson.*

Parol evidence inadmissible to vary or contradict a writing.

392. *Parol Evidence inadmissible to vary or contradict a Writing.*—It is a general rule that parol evidence will not be admitted to vary, enlarge, or contradict the terms of an instrument in writing, as written is of a higher nature than parol evidence, and as the parties to the contract must be supposed to intend, by having recourse to writing, to exclude the uncertainty of oral testimony: (Roscoe N. P. 11.)

Parol evidence will, however, be admissible,

1st. To prove any matter collateral to the writing: (*ib.*)

2ndly. To prove that a consideration was given.

Thus, if a deed recites no consideration, evidence may be given that a consideration did in fact pass: (*Mildmay's case*, 1 Co. 176.) Or, if the consideration recited be less than the real consideration, parol evidence will be admissible to prove what consideration actually passed: (*R.* v. *Scammoden*, 3 T. R. 474.) *Mildmay's case.*

3rdly. As a deed takes effect from the delivery, evidence may be given that the date appearing on the face of it is not the day on which it was executed: (*Steele* v. *Mast*, 4 B. & C. 272.) *R.* v. *Scammoden.* *Steele* v. *Mast.*

4thly. Mere words of description in a deed, not operating by way of estoppel, may be contradicted by parol: (*Skipwith* v. *Green*, 1 Strange, 610.) *Skipwith* v. *Green.*

5thly. Parol evidence is admissible to prove fraud, illegality or error in written instruments: (*Paxton* v. *Popham*, 9 East, 421; *Collins* v. *Blantern*, 1 Smith's Leading Cases, 155.) *Paxton* v. *Popham.* *Collins* v. *Blantern.*

6thly. Parol evidence of custom or usage will be received to annex incidents to written contracts on matters with respect to which they are silent. 1st. In contracts between landlord and tenant; 2nd. In commercial contracts; 3rd. In contracts in other transactions of life, in which known usages have been established and prevailed: (1 Smith L. C. 306.)

7thly. Parol evidence of use under ancient charters, grants, &c., is admissible to explain any ambiguous or general terms contained therein: (Roscoe N. P. 15.)

8thly. Parol evidence is admissible to explain any latent ambiguity in a written instrument; thus, if a testator bequeaths to his son John Thomas, and he has two sons of the name, parol evidence will be received to show which of the two was intended: (*Doe* v. *Chichester*, 4 Dow. 93.) If, however, the ambiguity be patent on the face of the instrument, parol evidence will not be admissible to explain it: (*Baylis* v. *Attorney-General*, 2 Atk. 239.) *Doe* v. *Chichester.* *Baylis* v. *Attorney-General.*

III. Presumptive Evidence.

Presumptions are usually divided into three kinds: 1st. Presumptions *juris et de jure*. 2nd. Presumptions of law. 3rd. Presumptions of fact. Presumptive evidence.

1st. The first are purely artificial, and cannot be contradicted; thus a will is conclusively presumed to be revoked by a subsequent alteration of the property: (*Goodtitle* v. *Otway*, 2 H. Bl. 522.) *Goodtitle* v. *Otway.*

2nd. The second class consists of those cases in which the Court will direct a jury to find a fact of which no evidence has been given, as for instance, the consideration for a bill of exchange.

3rd. The third class of presumptions are exclusively within the province of a Jury, and they occur whenever direct proof of a fact is offered to the Jury as evidence of another fact which is the usual consequence of the former: (Roscoe N. P. 20.) Thus a receipt for the rent last due is presumptive evidence that all the former rent has been paid: (*ib.*)

IV. HEARSAY EVIDENCE.

Hearsay evidence.

Hearsay is the repetition of the declaration of another party, and it is in general inadmissible as evidence. There are, however, certain exceptions to the general rule, and hearsay evidence is admissible—

1st. In questions of pedigree. As the only means by which pedigrees can often be proved is by the general reputation existing in the family, necessity demands that evidence of such reputation should be admitted. Accordingly the declarations of persons connected with the family, inscriptions on monuments, entries in family bibles and the like, are held to be admissible evidence in such cases: (Roscoe N. P. 26, 27.)

Morewood v. *Wood.*

2nd. Hearsay is also admissible to prove public rights, and rights in the nature of public rights. But such evidence is not admissible to prove prescriptive rights of a private nature: (*Morewood* v. *Wood*, 14 East, 327.)

3rd. Hearsay evidence is admissible when it is part of the transaction. In such cases the declarations are in the nature of facts, and the testimony of a witness who was present at the time would seem to be in the nature of primary evidence of such facts.

Foulkes v. *Sellway.*

4th. Where character is in issue, hearsay evidence of the representations of third parties is always admitted: (*Foulkes* v. *Sellway*, 3 Esp. 236.)

5th. Evidence of assertions of ownership is sometimes admissible in questions of title: (Roscoe N.P.32.)

Higham v. *Ridgway.*

6th. Evidence of the declarations of deceased persons, made against their own interest is admissible: (*Higham* v. *Ridgway*, 2 Smith L. C. 183.)

Price v. *Lord Torrington.*

7th. Hearsay of persons making entries in the

regular discharge of their duty is admissible: (*Price* v. *Lord Torrington*, 1 Smith L. C. 139.)

V. Admissions.

Admissions of a party to the suit, whether made directly, or to be inferred from his conduct, are evidence against him. Thus, an acknowledgment in a deed of the receipt of money is conclusive evidence of payment: (*Baker* v. *Dewey*, 1 B. & C. 704.) And letters written by a party or declarations made by him are evidence against him: (Roscoe N. P. 38.) Thus also payment of money into Court is an admission of everything that the plaintiff must have proved to recover it: (*Dyer* v. *Ashton*, 1 B. & C. 4.)

Admissions. *Baker* v. *Dewey*. *Dyer* v. *Ashton*.

An admission is evidence, whether made by a nominal party, who sues for the benefit of another or by the party really interested in the suit: (*Bauerman* v. *Radenius*, 2 Smith L. C. 226.)

Bauerman v. *Radenius*.

The admission of one partner is evidence against another: (*Nicholls* v. *Dowding*, 1 Stark. 181.)

Nicholls v. *Dowding*.

Admissions of counsel or attorney at the trial are evidence of the fact admitted: (*Young* v. *Wright*, 1 Camp. 141.) But statements made by the attorney in the course of conversation are not admissible against his client: (*ib.*; *Parkins* v. *Hawkshaw*, 2 Stark. 239.)

Young v. *Wright*. *Parkins* v. *Hawkshaw*.

It is a rule, however, that the whole of an admission must be taken together.

393. *Object of Evidence.*—The following are some of the rules which regulate the practice of the Courts with regard to the admission of evidence.

Object of evidence.

1st. *Evidence need not be given of any facts of which the Courts will take judicial notice.* Facts of which the Courts will take judicial notice need not be proved. The Courts will judicially notice the order and course of proceedings in Parliament; the privileges of the House of Commons; the existence of war with a foreign state; the existence of a foreign state recognized by the British government, but not otherwise; the Superior Courts, their jurisdiction and course of proceeding; the privileges of their officers; the beginning and end of term; general customs, as those of gavelkind and borough-English; the limits of Ecclesiastical jurisdiction; they will take notice of the different counties and palatinates in

What the Courts will take judicial notice of.

England; the days of festivals appointed by the calendar; the number of days in a particular month; the time of the rising and setting of the sun and moon; that a particular day of the month fell on a Sunday: (see generally Roscoe N. P. 51.)

What the Courts will not take judicial notice of.

The Courts will not notice judicially the nature and jurisdiction of a local Inferior Court; nor foreign laws; nor the Scotch law; nor the seal or proceedings of a foreign Court; nor the laws of the colonies; nor the Queen's proclamation without the production of the *Gazette*; nor particular customs, as those of London, unless duly certified by the Recorder; nor that a particular town is within a certain diocese; nor the local situation of a town or a street in a county; nor that a particular town (as Dublin) is in Ireland; nor will they notice the rules of the Poor Law Commissioners made under 4 & 5 Will. 4, c. 76, s. 15: (see generally Roscoe N. P. 52.)

2nd. *The evidence must be confined to the points in issue.* In general, evidence of collateral facts is inadmissible: (*Holcombe* v. *Hewson*, 2 Camp. 391.) Where, however, collateral facts are so blended with the matter in issue as to make evidence of them necessary towards its proper decision, such evidence will be admissible. Thus, in an action by a rector for tithes, where the question in issue is, whether there exists a modus in respect of a certain farm, evidence may be given that other farms in the same township are not subject to the same modus in order to show that it is not a farm modus: (*Blundell* v. *Howard*, 1 M. & S. 292.)

3rd. *The Evidence must be confined to the cause of action stated in the summons.*

Section 75.

No evidence to be given that is not in summons.

Sect. 75. And be it enacted, that no evidence shall be given by the plaintiff on the trial of any such cause as aforesaid of any demand or cause of action, except such as shall be stated in the summons hereby directed to be issued.

PROOF OF DOCUMENTS.

Acts of Parliament.

394. *Acts of Parliament.*—Public Acts of Parliament, and private Acts made public, need not be proved, as the Courts will take judicial notice of them. Private Acts are proved by an examined copy of the Parliament Roll: (B. N. P. 225.)

395. *Records of the Superior Courts.*—Where the existence of a record is put in issue, the proof is by the production of the record, or by having the tenor of it duly certified by a *certiorari* and *mittimus* out of Chancery: (*Winsor* v. *Dunford*, 1 C. C. Chron. 317.) If the existence of the record itself be not in issue, it may be proved by an examined copy, under the Great Seal, or the seal of the Court to which the record belongs: (*ib.*)

Records of Superior Courts. *Winsor* v. *Dunford.*

396. *Verdicts.*—When it is necessary to prove a verdict, not only must the *postea* be produced, but the judgment also must be proved: (B. N. P. 234.)

Verdicts.

397. *Writ.*—A writ must be proved by a copy of the record of it after its return, whenever it is the gist of the action: (B. N. P. 234.) In other cases the writ itself may be produced.

Writ.

398. *Inquisitions.*—In order to prove inquisitions, it is generally necessary to show the authority of the person who made the inquiry. With regard to escheators and others acting under a *general* commission, proof of their so acting is sufficient, but in other cases the commission must be produced: (Roscoe N. P. 76.)

Inquisitions.

399. *Rule of Court.*—A rule of Court is proved by the production of the rule, and proving the signature of the proper officer: (*Telby* v. *Harris*, 1 Ld. Raym. 745; *Duncan* v. *Scott*, 1 Camp. 102.)

Rule of court. *Telby* v. *Harris.* *Duncan* v. *Scott.*

400. *Judge's Order.*—A Judge's order is proved by producing the order and proving the Judge's signature, or by evidence of the rule making it a rule of Court: (*Still* v. *Halford*, 4 Camp. 17; Arch. Pl. & Ev. 400.)

Judge's order. *Still* v. *Halford.*

401. *Proceedings in Chancery.*—A decree in Chancery may be proved by an exemplification, or by an examined copy, or by production of a decretal order in paper, with proof of the bill and answer: (B. N. P. 244.) An answer is proved by the production of the bill and answer, or by examined copies of them: (Gilb. Ev. 55.)

Proceedings in Chancery.

402. *Proceedings in Parliament.*—Proceedings in

Proceedings in Parliament.

Parliament, judgments of the House of Lords, &c., are proved by examined copies: (Arch. Pl. & Ev. 396.)

Proceedings in the Admiralty and Ecclesiastical Courts.

403. *Proceedings in the Admiralty and Ecclesiastical Courts.*—Proceedings in these Courts are proved by examined copies: (Arch. Pl. & Ev. 397.)

Proceedings in Inferior Courts.

404. *Proceedings in Inferior Courts.*—Judgments and other proceedings of Inferior Courts generally are proved by the Minute Book produced from the proper custody, or by examined copies: (Roscoe N. P. 80.)

Proceedings in the new County Courts.

405. *Proceedings in the New County Courts.*—The proof of proceedings in the New County Courts is regulated by section 111 of the 9 & 10 Vict. c. 95, thus:

Section 111. — Minutes of proceedings to be kept.

Sect. 111. And be it enacted, that the Clerk of every Court holden under this Act shall cause a note of all plaints and summonses, and of all orders, and of all judgments and executions, and returns thereto, and of all fines, and of all other proceedings of the Court, to be fairly entered from time to time in a book belonging to the Court, which shall be kept at the office of the Court; and such entries in the said book, or a copy thereof bearing the seal of the Court, and purporting to be signed and certified as a true copy by the Clerk of the Court, shall at all times be admitted in all Courts and places whatsoever as evidence of such entries, and of the proceeding referred to by such entry or entries, and of the regularity of such proceeding, without any further proof.

Proceedings in bankruptcy.

406. *Proceedings in Bankruptcy.*—Commissions of bankruptcy, adjudications and certificates under the former system, and fiats in bankruptcy, adjudications, appointments, and certificates under the present law, may be proved by producing them, being first duly enrolled at the Bankrupt Office, and a certificate of the enrolment being endorsed thereon: (1 & 2 Will. 4, c. 56; 6 Geo. 4, c. 16, s. 96; 2 Will. 4, c. 114, s. 9; 12 & 13 Vict. c. 106, s. 236.)

Proceedings in insolvency.

407. *Proceedings in Insolvency.*—Petition, schedule, order of adjudication, and other proceedings in the Insolvent Court, may be proved by an office copy,

purporting to be signed by the officer in whose custody the proceedings are, and to be sealed with the seal of the Court without further proof: (1 & 2 Vict. c. 110, s. 105.)

Petitions for protection from process and proceedings incident thereto, purporting to be signed by a commissioner of the Court of Bankruptcy, or, since the transfer of the jurisdiction, by an Insolvency Commissioner, or copies of such petitions or other proceedings purporting to be so signed, are evidence of such proceedings having taken place: (7 & 8 Vict. c. 96, s. 37.)

Proceedings in foreign courts.

408. *Proceedings in Foreign Courts.*—Proceedings in foreign Courts are generally proved by exemplifications under the seals of such Courts: (Ach. Pl. & Ev. 406.)

Court rolls.

Doe v. *Hall.*

Doe v. *Mee.*

409. *Court Rolls.*—The rolls of a manor may be proved by the production of the rolls themselves, or examined copies: (*Doe* v. *Hall,* 16 East, 208; *Doe* v. *Mee,* 4 B. & Ad. 617.)

Proof of probate.

Kempton v. *Cross.*

Shepherd v. *Shorthose.*

Cox v. *Allingham.*

410. *Proof of Probate.*—A probate under the seal of the Ecclesiastical Court proves itself without more: (*Kempton* v. *Cross,* Hardw. 108.) And if the probate be lost it may be proved by an exemplification under the seal of the Ecclesiastical Court: (*Shepherd* v. *Shorthose,* 1 Stra. 412.) The entries in the Ecclesiastical Courts are also evidence: (*Cox* v. *Allingham,* Jacob, 514.)

Letters of administration.

Eden v. *Kendell.*

411. *Letters of Administration.*—Letters of administration prove themselves, and a certificate or exemplification given by the Ecclesiastical Court is also evidence: (B. N. P. 246.) The entries in the Ecclesiastical Courts are also evidence: (*Eden* v. *Kendell,* 8 East, 187.)

Entries in public books.

Lynch v. *Clerke.*

Salte v. *Thomas.*

412. *Entries in Public Books.*—Examined copies of entries of a public nature are receivable in evidence: (*Lynch* v. *Clerke,* 3 Salk. 154.) The books in which the entries are made must, however, be kept by public authority: (*Salte* v. *Thomas,* 3 B. & P. 190.)

Post-marks.

413. *Post-marks.*—It is not clear whether a post-mark would be held to prove itself, or whether a

stamper at the post-office, or a postmaster should be called to prove it: (*Abbey* v. *Lill*, 5 Bing. 299; *Plumer's case*, R. & R. C. C. 264.)

Abbey v. *Lill*. *Plumer's case*.

Public registers.

414. *Public Registers.* — Registers of baptisms, marriages and deaths may be proved by examined copies, or by the production of the register itself: (B. N. P. 247.) Some evidence of identity of the parties should, however, be superadded.

Ancient writings.

415. *Ancient Writings.*—The admissibility of ancient writings in general depends upon the custody they come from. If an ancient document be produced from the custody in which it may be reasonably expected to be found, it will be admitted. Thus, expired leases coming from the possession of the lessor, are admissible: (*Plaxton* v. *Dare*, 5 M. & R. 1; *Rees* v. *Walters*, 3 M. & W. 527.) And terriers coming from the bishop's registry or the rector's are evidence: (*Atkins* v. *Hatton*, 2 Anstr. 386.)

Plaxton v. *Dare*. *Rees* v. *Walters*. *Atkins* v. *Hatton*.

Corporation deeds.

416. *Corporation Deeds.*—The seal of the corporation must be proved by some one who knows it, though it is not necessary to call a witness (not being an attesting witness) who saw it affixed: (*Moises* v. *Thornton*, 8 T. R. 307.) The seal of the Corporation of London proves itself: (*Doe* v. *Mason*, 1 Esp. 53.) But most others must be proved.

Moises v. *Thornton*. *Doe* v. *Mason*.

Deeds and private writings.

417. *Deeds and Private Writings.*—If a deed or other instrument be subscribed by an attesting witness, such witness must be called; and it is doubtful whether even a solemn admission would dispense with such proof: (*Call* v. *Dunning*, 4 East, 53; *Bowles* v. *Langworthy*, 5 T. R. 366.)

Call v. *Dunning*. *Bowles* v. *Langworthy*.

If, however, the attesting witness be dead, or insane, or out of the jurisdiction of the Courts in England, his handwriting may be proved, and that will suffice: (*Curlie* v. *Child*, 3 Camp. 283; *Prince* v. *Blackburn*, 2 East, 252.)

Curlie v. *Child*. *Prince* v. *Blackburn*.

The question, what means of knowing a person's handwriting will make the evidence of a witness as to such handwriting admissible? was very fully discussed by the Court of Queen's Bench, in the case of *Doe* v. *Suckerman* (5 A. & E. 730), and the result is very clearly stated in the judgment of Mr. Justice

Doe v. *Suckerman*.

PATTESON as follows: "The knowledge of handwriting may be acquired either by seeing the party write, in which case it will be stronger or weaker according to the number of times and the periods and other circumstances under which the witness has seen the party write, but it will be sufficient knowledge to admit the evidence of the witness (however little weight may be attached to it in such cases), even if he has seen him write but once, and then merely signing his surname; or the knowledge may have been acquired by the witness having seen letters or other documents professing to be the handwriting of the party, and having afterwards communicated personally with the party upon the contents of those letters or documents, or having otherwise acted upon them by written answers producing further correspondence, or acquiescence by the party in some matter to which they relate; or by any other mode of communication between the party and the witness, which, in the ordinary course of the transactions of life, induces a reasonable presumption that the letters or documents were the handwriting of the party; evidence of the identity of the party being of course added *aliunde*, if the witness be not personally acquainted with him."

There is an exception in favour of instruments more than thirty years old, and produced from the proper custody; and these are held to prove themselves.

PROOF BY WITNESSES.

418. *Competency of Witnesses.*—Questions as to the competency of witnesses are for the Court to determine: (*Carpenters' Co.* v. *Hayward*, 1 Doug. 375.) As a general rule it may be laid down that all persons with the following exceptions are competent as witnesses: Proof by witnesses. Competency of witnesses *Carpenters' Co.* v. *Hayward.*

Exceptions.

1. Insane persons, idiots, and lunatics, during their lunacy (though not in their lucid intervals), are incompetent witnesses: (Com. Dig. Testm. A. 1.) Children who on account of their tender age or want of proper instruction, do not understand the moral obligation of an oath, are also incompetent: (B. N. P. 293.)
2. Atheists and other infidels who profess no religion which can bind their consciences are incompetent witnesses, but not so such as

believe in God the avenger of crime, though they disbelieve the Scriptures: (*Omichund* v. *Barker*, Willes, 549.)

Omichund v. *Barker*.

3. Persons are in some instances not competent witnesses on account of their being privileged. Thus, counsel, attorneys, and persons employed as interpreters in a cause, are not bound to reveal communications made to them in such character, and it is doubtful whether the Court would even allow them to do so, as the privilege is that of the client. The same privilege also extends to the clerks of counsel and attorneys: (Roscoe N. P. 122.)

Formerly persons convicted of crime, and such as had an interest in the event of the suit, were not competent witnesses; but by statute 6 & 7 Vict. c. 85, s. 1, it is enacted:

6 & 7 Vict. c. 85. *Section* 1.

Sect. 1. Whereas the inquiry after truth in Courts of Justice is often obstructed by incapacities created by the present law, and it is desirable that full information as to the facts in issue, both in criminal and in civil cases, should be laid before the persons who are appointed to decide upon them, and that such persons should exercise their judgment on the credit of the witnesses adduced, and on the truth of their testimony: now therefore be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that no person offered as a witness shall hereafter be excluded by reason of incapacity from crime or interest from giving evidence, either in person, or by deposition, according to the practice of the Court, on the trial of any issue joined, or of any matter or question or on any inquiry arising in any suit, action or proceeding, civil or criminal, in any Court, or before any Judge, Jury, Sheriff, Coroner, Magistrate, Officer, or person having, by law or by consent of parties, authority to hear, receive, and examine evidence; but that every person so offered may and shall be admitted to give evidence on oath, or solemn affirmation in those cases wherein affirmation is by law receivable, notwithstanding that such person may or shall have an interest in the matter in question, or in the event of the trial of any issue, matter, question, or inquiry, or of the suit, action, or proceeding in which he is offered as a witness, and notwithstanding that

Witnesses not to be excluded from giving evidence by incapacity from crime or interest.

individually named in the record, or any lessor of the plaintiff, or tenant of premises sought to be recovered in ejectment, or the landlord or other person in whose right any defendant in replevin may make cognizance, or any person in whose immediate and individual behalf any action may be brought or defended, either wholly or in part, or the husband or wife of such persons respectively; provided also, that this Act shall not repeal any provision in a certain Act passed in the session of Parliament holden in the seventh year of the reign of His late Majesty, and in the first year of the reign of Her present Majesty, intituled "An Act for the Amendment of the Laws with respect to Wills:" provided that in Courts of Equity any defendant to any cause pending in any such Court may be examined as a witness on the behalf of the plaintiff or of any co-defendant in any such cause, saving just exceptions; and that any interest which such defendant so to be examined may have in the matters, or any of the matters in question in the cause shall not be deemed a just exception to the testimony of such defendant, but shall only be considered as affecting or tending to affect the credit of such defendant as a witness.

Not to repeal any provision in 7 Will. 4 & 1 Vict. c. 26.

In Courts of Equity defendant may be examined on behalf of the plaintiff or any co-defendant, &c.

And even parties to the suit are competent witnesses in actions tried in the New County Courts, for by the 83rd section of the County Courts Act, it is thus enacted:

Sect. 83. And be it enacted, that on the hearing or trial of any action or on any other proceeding under this Act the parties thereto, their wives and all other persons, may be examined, either on behalf of the plaintiff or defendant, upon oath, or solemn affirmation in those cases in which persons are by law allowed to make affirmation instead of taking an oath, to be administered by the proper officer of the Court.

Section 83. Parties and others may be examined.

Attendance of Witnesses.

Either of the parties to the suit or other proceeding, may obtain summonses to witnesses at the office of the Clerk of the Court.

Sect. 85. And be it enacted, that either of the parties to the suit or any other proceeding under this Act may obtain, at the office of the Clerk of the Court, summonses to witnesses, to be served by one of the Bailiffs of the Court, with or without a

Section 85. Summonses to witnesses.

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clause requiring the production of books, deeds, papers, and writings in their possession or control, and in any such summons any number of names may be inserted.

SUMMONS TO WITNESS.

No.

In the County Court of at

(Seal.)

Between { *A. B., Plaintiff,* *and* *C. D., Defendant.* }

You are hereby required to attend at [the court house] at on the day of at the hour of to give evidence in the above cause on behalf of the above-named [and then and there to have and produce (state any particular documents required) *and all other books, papers, writings, and other documents relating to the said action, which may be in your custody, possession, or power]. In default of your attendance, you will be liable to a penalty of* 10*l.* *under the statute of* 9 *&* 10 *Vict. c.* 95.

Given under the seal of the Court, this day of 18

Clerk of the said Court.

To of

As to the service of this summons, see *ante*, title *Service of Summons*. The same rules apply to the service of a summons to a witness, as to the service of summonses to appear to a plaint.

Rule 14. — Rules as to the service of summonses to a plaint.

Rule 14. The above rules, except rule 11, as to the mode of service of summonses to appear to a plaint, shall apply to the service of all summonses, judgments, orders, notices, and process whatsoever, issuing under the authority of the said Act, except where otherwise directed by the said Act, or any rule made under the authority thereof.

Any person disobeying the summons, or refusing to give evidence when called upon in Court, shall be liable to a penalty not exceeding 10*l.*

Section 86. — Penalty on witnesses neglecting summons.

Sect. 86. And be it enacted, that every person on whom any such summons shall have been served, either personally or in such other manner as shall be directed by the general rules or

practice of the Courts, and to whom at the same time payment or a tender of payment of his expenses shall have been made on such scale of allowance as shall be from time to time settled by the general rules or practice of the Court, and who shall refuse or neglect, without sufficient cause to appear, or to produce any books, papers, or writings required by such summons to be produced, and also every person present in Court who shall be required to give evidence, and who shall refuse to be sworn and give evidence, shall forfeit and pay such fine, not exceeding ten pounds, as the Judge shall set on him; and the whole or any part of such fine, in the discretion of the Judge, after deducting the costs, shall be applicable toward indemnifying the party injured by such refusal or neglect, and the remainder thereof shall form part of the general fund of the Court in which the fine was imposed.

The payment of the fine may be enforced upon the order of the Judge.

Sect. 87. And be it enacted, that payment of any fine imposed by any Court under the authority of this Act may be enforced upon the order of the Judge in like manner as payment of any debt adjudged in the said Court, and shall be accounted for as herein provided. *Section* 87. Fines how to be enforced and accounted for.

ORDER FOR PAYMENT OF PENALTY.

No.

In the County Court of *at*

(Seal.)

Between { *A. B., Plaintiff,* *and* *C. D., Defendant.* }

Whereas it has been made to appear to the Court that E. F., of *was duly summoned to be and appear as a witness in this action, at a County Court at* *on* *the* *day of* [*and also to produce*, as the case may be]. *and that payment* [or *a tender of payment*] *of his reasonable expenses was duly made to him the said E. F.: And whereas the said E. F. did not appear, &c. on, &c., in obedience to the said summons,* [or *having appeared in pursuance of the said summons, did wilfully refuse to be sworn and to give evidence in the said action* (or *to produce such, &c.*)]:

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Now the said Court doth hereby order that the said E. F. shall pay a fine of £ for such neglect [or refusal] to the Clerk of this Court, on or before the day of [or *forthwith*]; *and that the sum of £ , part of the said fine, shall be paid by the said Clerk to the in this action, being the party injured by such neglect* [or *refusal*] *of the said E. F.*

Given under the seal of the Court, this day of 18 .

By the Court,

Clerk.

419. *Allowance to Witnesses.*

Rule 35. — Allowance to witnesses.

Rule 35. The Judge shall in each case order what number of witnesses shall be allowed on taxation of costs, the allowance for whose attendance shall be according to the scale in the schedule, unless otherwise ordered, but in no case to exceed such scale.

The following is the scale of allowances:

	s.	*d.*
Gentlemen, merchants, bankers, and professional men .	7	6
Tradesmen, auctioneers, accountants, clerks, and yeomen	5	0
Journeymen, labourers, and the like	2	[illegible]
Travelling expenses per mile, one way	0	6

420. *Habeas Corpus.*—If the witness be in custody, the usual way of procuring his attendance is by a writ of *habeas corpus ad testificandum*: (Tidd Pr. 858.) A Judge of one of the Superior Courts may issue a writ of *habeas corpus* to bring up a prisoner from any prison in the United Kingdom, for the purpose of giving evidence in any Court of Record in England. In some cases, also, a *habeas corpus* will lie to bring a witness from a lunatic asylum: (*Fennell* v. *Tait*, 1 C. M. & R. 584.)

421. *Protection of Witness from Arrest.*—A witness is protected from arrest whilst attending the trial, and also whilst going and returning: (*Arding* v. *Flower*, 8 T. R. 536.)

It is provided by the County Courts Act that persons giving false evidence in the County Court shall be deemed guilty of perjury.

Section 84.

Sect. 84. And be it enacted, that every person who in any examination upon oath or solemn affirmation before any Judge of the County Court shall wilfully or corruptly give false evidence shall be deemed guilty of perjury.

Persons giving false evidence guilty of perjury.

EXAMINATION OF WITNESSES.

422. *Ordering Witnesses out of Court.*—The Judge may, at his discretion, on the application of either party, order the witnesses out of Court. If a witness remains in Court after he is ordered to withdraw, his evidence does not thereby become inadmissible, but it is still in the discretion of the Judge to permit the examination or not: (*Parker* v. *McWilliam,* 6 Bing. 683.)

Rules for the examination of witnesses.

The following are some of the rules which regulate the examination of witnesses:—

1st. The examination should be strictly confined to the matter in issue between the parties.

2ndly. No one will be allowed to lead his own witness, or, in other words, to put questions to him in such a form as would suggest the answers.

3rdly. In cross-examination leading questions may be put to the witness.

4thly. If the witness shows a leaning in favour of the party on whose behalf he is cross-examined, the right to put leading questions must be exercised within stricter limits.

5thly. Re-examination is only allowed for the purpose of explaining facts which may come out on cross-examination.

The rule on this point is laid down by ABBOT, C. J., in the *Queen's case* (2 B. & B. 297), as follows: "I think the counsel has a right, on re-examination, to ask all questions which may be proper to draw out an explanation of the sense and meaning of the expressions used by the witness on cross-examination, if they be in themselves doubtful; and also of the motive by which the witness was induced to use those expressions; but he has no right to go further, and introduce matter new in itself, and not suited to the purpose of explaining either the expressions or the motives of the witness."

6thly. If the defendant gives evidence in proof of his defence, the plaintiff may then call witnesses in reply. Their evidence must, however, be confined strictly to the defence set up, and the plaintiff will not

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be allowed to give evidence in further support of his original case: (1 Arch. N. P. 41.)

7thly. The opinion of a witness as to any of the facts in issue is in general inadmissible as evidence; as to questions of science, however, such opinion is admissible: (Roscoe N. P. 130.)

8thly. A witness will be allowed to refer to an entry or memorandum made by himself at the time or shortly after the occurrence of the fact to which it relates, in order to refresh his memory; and this though the entry or memorandum would not of itself be evidence: (Roscoe N. P. 131.)

Special Defences applicable to all Actions on Contracts—(As to notice, see *ante*, p. 412).

I. Set-off.

Statutes as to set-off.

The stat. 2 Geo. 2, c. 22, s. 23, made perpetual by 8 Geo. 2, c. 24, s. 4, first gave the right of setting off one debt against another; and sect. 5 of that statute enacts that mutual debts may be set off, notwithstanding such debts are deemed at law of a different nature, unless they shall accrue by reason of a penalty on a bond or specialty. And in all cases where either the debt for which the action is brought, or the debt intended to be set off, shall be pleaded in bar, in which plea shall be shown how much is truly and justly due on either side, and in case the plaintiff shall recover in any such action or suit, judgment shall be entered for no more than shall appear to be truly and justly due to the plaintiff, one debt being set against the other as aforesaid.

Upon this enactment depends the right of setting off debts and demands in the County Courts, and, subject to the provisions of the 9 & 10 Vict. c. 95, the right of set-off in the County Courts is co-extensive with that which exists in the Superior Courts. By sect. 76 of that Act it is enacted "that no defendant in any Court holden under this Act shall be allowed to set off any debt or demand claimed or recoverable by him from the plaintiff," "unless such notice thereof as shall be directed by the rules made for regulating the practice of the Court shall have been given to the Clerk of the Court."

Meaning of the word "recoverable."

It may be contended that the word "recoverable" in this section means "recoverable" in the County

Court, and that the right of set-off is subject to the same limitation as to amount as the right of a plaintiff to bring his action. Any other construction would seem to militate against the spirit of the Act. Thus, if the plaintiff brings an action in the County Court for 20*l*., and the defendant, having a demand against the plaintiff to the amount of 40*l*., is desirous of setting off 20*l*. against the plaintiff's demand. If the defendant abandons the excess above 20*l*. it is clear that he is entitled to his set-off, as a plaintiff would be under sect. 63. But if the defendant does not abandon the excess, it is by no means clear whether he will be entitled to such set-off or not. To allow such a set-off would be indirectly to give jurisdiction to the County Court to a greater amount than 20*l*., as the defendant might, by a separate action, recover the other 20*l*. It may, in some instances, be a hardship upon the defendant not to be allowed to set off part of a larger debt against the plaintiff's demand, and still be allowed to recover the balance; but, on the other hand, the inconvenience of allowing such a set-off would be very great, and it would be in direct violation of the limits of the County Courts jurisdiction. If the principle were once admitted that part of a debt exceeding 20*l*. can be set off without abandoning the excess, the County Courts might try claims to an indefinite amount. Thus, suppose the defendant be indebted to the plaintiff in ten different sums of 20*l*. each for which he brings ten actions in the County Court, and the defendant, on the other hand, claims 200*l*. from the plaintiff on a bond which the plaintiff contends is void. The defendant divides the 200*l*. into ten sums of 20*l*. each, and sets off the same against the demands of the plaintiff. Under such circumstances, the Judge of the County Court would have to determine the validity of the bond, and virtually to adjudicate on the right to the sum of 200*l*.

What debts may be set off in the County Court.

A set-off may be had in all acts of contracts, but not in actions of *tort*. The demand intended to be set off must, however, be liquidated: (*Freeman* v. *Hyett*, 1 W. Bl. 394.) And the defendant can only set off debts due to him at the time of action brought: (*Braithwaite* v. *Colman*, 4 Nev. & Man. 654.)

No set-off in actions of *tort*, nor of an unliquidated demand.

The debt to be set off must not be barred by the Statute of Limitations, and if set off the plaintiff may plead the statute: (B. N. P. 180.) And it would

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seem that he would be entitled to an adjournment in order to enable him to give notice.

A debt for which a verdict has been obtained against a plaintiff in a prior action may be set off against a present demand (B. N. P. 180); and so may a judgment, though a writ of error be pending thereon: (*Reynolds* v. *Beerling*, 3 T. R. 188.)

Demands must be mutual.

In order to constitute a valid set-off, the demands must be mutual, and due in the same right.

Balance recoverable.

It is to be observed that, subject to the limitations already mentioned, the defendant may in a separate action recover the balance of a sum of money part of which has been set off: (*Hennell* v. *Fairland*, 3 Esp. 104.) But as to the part set off, the decision of the Court upon it is final, and the defendant cannot, after having failed to prove his set-off, bring an action for the amount: (*Eastmure* v. *Lawes*, 5 Bing. N. C. 444.)

II. Infancy.

Infancy.

Infants have the same privileges and disabilities in actions tried in the County Courts that they have in proceedings in the Superior Courts, with the exceptions contained in the 64th section of the 9 & 10 Vict. c. 95, which enacts "that it shall be lawful for any person under the age of twenty-one years to prosecute any suit in any Court holden under this Act for any sum of money, not greater than twenty pounds, which may be due to him for wages or piece-work, or for work as a servant, in the same manner as if he were of full age."

In the Superior Courts an infant cannot sue or be sued in person, but must sue and be sued by his next friend or guardian (see Chitty's Arch. Pr. 1088, 1091); and there is no provision in the County Courts Act which alters this rule of law. It is true that the form of notice prepared by the Judges is drawn in such a way as to imply that an infant is to give the notice in person, and not through a *prochein amy*, but he may be entitled to give the notice in his own name, and still be subject to the common law rule as to appearance in Court.

If an infant sue by *prochein amy*, still the legal guardian is considered, as a general rule, the most fit person to be appointed such *prochein amy*: (Chitty's Arch. Pr. 1089.) In order to enable an infant to sue

by guardian or *prochein amy*, such guardian or *prochein amy* must be admitted by the Court, which, in the County Court would probably be done upon application at the trial.

Infancy a good defence to all actions on contracts, except for necessaries.

It may be laid down as a general rule that infancy is a good defence to all actions on contract. This rule is, however, subject to a very important exception, namely, that an infant may bind himself for necessaries, such as for meat, drink, apparel, medicine, or instruction: (Co. Litt. 172, a.) The question of what are or what are not necessaries must be governed by the fortune and circumstances of the infant, and he may enter into a valid contract for what may be necessary for him in the rank which he is entitled to keep: (*Peters* v. *Fleming*, 6 M. & W. 42; *Wharton* v. *Mackensie*, 5 Q. B. 606.) It is not sufficient that the articles for which the infant is sought to be made liable should be in their nature necessaries, but they must also be, in fact, to some degree, necessaries to the infant at the time. Thus, articles of apparel are necessaries for an infant, but if he is already abundantly supplied with apparel, he will not be held liable on a contract for more: (*Burkhardt* v. *Angerstein*, 1 M. & Rob. 458; *Ford* v. *Fothergill*, Peake, 229.)

In a question whether articles are necessaries or not, the burden of proof lies upon the plaintiff: (per Lord Kenyon, C.J., in *Ford* v. *Fothergill*, 1 Esp. 211.)

Contract of infants voidable only.

The contract of an infant for what are not necessaries is not, however, void, but voidable, and he may confirm his contract on his coming of age. Such confirmation is required by stat. 6 Geo. 4, c. 14, s. 5, to be in writing, otherwise it is of no effect.

Infancy no defence in an action for *tort*.

In actions for *tort*, such as assault and battery, trespass, &c., infancy is no defence. The cause of action must, however, be in its nature a wrong, and the liability of the infant does not depend upon the form, but upon the real nature of the subject-matter sued for: (*Bristow* v. *Eastman*, 1 Esp. 172.)

423. *Proof of Infancy when denied.*—Infancy may be proved by calling any person who can speak as to the time of the defendant's birth; or by declarations of deceased members of his family, mentioning the time of his birth, with proof of identity: (Roscoe N. P. 313.) It may also be proved by parochial registers.

Book VI. THE PRACTICE. — Cap. 6. Evidence.

III. Coverture.

Coverture.

The coverture of the plaintiff or defendant, at the time when the contract was entered into, is in general a defence to an action on such contract.

There are cases, however, where a married woman has been allowed to be sued as a *femme sole*. Thus, if the wife of a foreigner, resident abroad, live and trade here as a *femme sole*, she may be sued as such: (*De Gaillon* v. *L'Aigle*, 1 B. & P. 357.) So also if the husband has abjured the realm (*Lean* v. *Schutz*, 2 W. Bl. 1195), or has been transported for a limited period, the wife is to be considered as a *femme sole*: (*Carrol* v. *Blencow*, 4 Esp. 27.) After a divorce *ab initio*, the wife becomes a single woman by operation of law, and it is the same as if she had always remained single: (*Anstey* v. *Manners*, Gow, 11.) Mere separation, however, or even a divorce *a mensa et thoro* will not render the wife liable to be sued as a *femme sole*: (*Lewis* v. *Lee*, 3 B. & C. 291.) Nor can the wife of an Englishman who is resident abroad be so sued: (*Marsh* v. *Hutchinson*, 2 B. & P. 226.)

Where coverture is the defence, the defendant must prove her marriage, and also that her husband was living at the time of the contract entered into. But in the absence of evidence of the husband's death, proof of his being alive within seven years is sufficient: (*Hopewell* v. *De Pinna*, 2 Camp. 113.)

The marriage may be proved by a copy of the registry, or by the evidence of a witness who was present. Marriage may also be proved by reputation and cohabitation: (*Kay* v. *Duchess de Pienne*, 3 Camp. 123.)

IV. Statute of Limitations.

Statute of Limitations.

The time in which personal actions must be brought is governed by the following statutes, viz., 21 Jac. 1, c. 16 (the Statute of Limitations); 4 Anne, c. 16; 9 Geo. 4, c. 14; and 3 & 4 Will. 4, c. 42.

The following actions must, by stat. 21 Jac. 1, c. 16, be brought within *six years* after the cause of action accrued.

1. All actions for injuries to the person or to land, or personal property (except those hereinafter particularized.)

2. Detinue.

3. Trover.
4. Replevin.
5. Account (except upon accounts between merchants.) (*a*)
6. Trespass on the case (except for verbal slander.)
7. Debt.
8. Assumpsit.
9. For arrears of rent.

By the same statute, the term of limitation has been fixed at *four years* in the following actions, viz.:—

Trespass for assault, &c.

1. Trespass for assault, menace, battery and wounding.
2. Trespass for false imprisonment.

Verbal slander.

The time of limitation in actions for verbal slander is *two years.*

Exceptions.

The last-mentioned statute excepts the following cases:—

1st. If the person *entitled* to sue shall at the time when the cause of action accrued be an infant.
2nd. If she be at such time a married woman.
3rd. If he be at such time *non compos mentis.*
4th. If he be at such time in prison.
5th. If he be at such time beyond seas.

In all these cases it is provided that such person shall be at liberty to sue within the same period after the removal of the disability as is allowed to persons having no such impediment.

And by stat. 4 Anne, c. 16, s. 19, if any person *liable to be sued* shall, at the time when the cause of action accrued, be beyond the seas, a similar extension of the time for bringing the action shall in that case also be permitted.

What will take a case out of the provisions of the statute.

In actions upon simple contract the case will be taken out of the statute—

1st. By proof of any payment on account of principal or interest within six years.

2nd. By proof of an acknowledgment or promise in writing within six years, signed by the party to be charged (see 9 Geo. 4, c. 14); by which it is provided, that the promise or acknowledgment of one co-contractor shall not affect another co-contractor.

(*a*) This exception relates only to actions of account: (*Inglis* v. *Haigh*, 8 M. & W. 769.)

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3 & 4 Will. 4, c. 27, s. 40, enacts, that the following actions must be brought within *twenty years* after a present right to recover shall have accrued to some party capable of giving a discharge for the same.

What actions may be brought within twenty years.

1st. Actions for money secured by mortgage.
2nd. Actions on judgments.
3rd. Money charged upon or made payable out of land or rent.
4th. Actions for legacies.

What will take the case out of the statute.

Any such case will be taken out of the operation of the statute—

1st. By proof of any payment on account within *twenty years.*

2nd. By proof of any acknowledgment in writing signed by the party to be charged within twenty years.

It is further provided by the same statute, sect. 41,

Arrears of dower.

1st. That no arrears of dower for more than *six years* next before action brought shall be recovered.

Arrears of rent.

2nd. That no arrears of rent or interest on money secured on land, or on a legacy or damages in respect of the same shall be recovered, except within *six years* after the same became due, or next after part payment or acknowledgment in writing. The section excepts actions between mortgagees and prior incumbrancers in certain cases.

When statute begins to run.

The statute begins to run as soon as the debt or damage becomes legally recoverable; thus, in cases of contract, the statute begins to run from the time of breach, and in actions on bills of exchange and promissory notes from the time of their becoming due: (*Wheatley* v. *Williams*, 1 M. & W. 533.)

V. Bankruptcy.

It is enacted by 12 & 13 Vict. c. 106,—

Section 205.

Bankrupt having obtained his certificate, free from arrest.

Sect. 205. That any bankrupt who shall, after his certificate shall have been allowed, be arrested, or have any action brought against him, for any debt, claim, or demand provable under his bankruptcy, shall be discharged upon entering an appearance, and may plead in general that the cause of action accrued before he came bankrupt, and may give this Act and the special matter in evidence; and such bankrupt's certificate shall be sufficient evidence of the trading, bankruptcy, fiat, or petition

Certificate to be evidence of the bank-

for adjudication, and other proceedings precedent to the obtaining such certificate; and if any such bankrupt shall be taken in execution or detained in prison for such debt, claim, or demand, where judgment has been obtained before the allowance of his certificate, it shall be lawful for any Judge of the Court wherein judgment has been so obtained, on such bankrupt's producing his certificate, to order any officer who shall have such bankrupt in custody by virtue of such execution to discharge such bankrupt without exacting any fee, and such officer shall be hereby indemnified for so doing.

ruptcy and proceedings, and bankrupt in execution may be discharged.

The production of the certificate, and the confirmation thereof, under 5 & 6 Vict. c. 122 (see s. 42), or if the bankruptcy took place under the 12 & 13 Vict. c. 106, the mere production, will be a conclusive answer to all proceedings to recover any debt provable under the fiat. The bankrupt may, however, revive the debt by an express promise in writing signed by him or by his agent duly authorized in writing. A parol agreement or promise to that effect is altogether void: (5 & 6 Vict. c. 122, s. 43.)

VI. Insolvency.

Insolvency.

Defendant may plead his discharge, under 1 & 2 Vict. c. 110, in bar of any action brought against him for any debt that has been included in the schedule. And the only evidence in support of such plea is a copy duly certified of the schedule to show that the defendant is discharged from the debt in question, and a copy of the adjudication to prove the actual discharge. 1 & 2 Vict. c. 110, s. 105, provides that a copy of the petition, schedule, order and other orders and proceedings under the act, purporting to be sealed with the seal of the Insolvent Court, shall at all times be admitted, in all courts and places whatever, as sufficient evidence of the same, without any proof whatever given of the same.

Evidence.

Effect of final order.

A final order under 5 & 6 Vict. c. 116, and 7 & 8 Vict. c. 96, may be pleaded in bar to an action brought for a debt inserted in the schedule: (*Jacobs* v. *Hyde*, 12 Jur. 565, overruling *Toomer* v. *Gingell*, 3 C. B. 322.) In support of such plea it will be necessary to produce the schedule and the final order for protection and distribution, signed by the Commissioner or Judge, as the case may be.

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VII. Other Defences generally applicable.

Accord and satisfaction.

424. *Accord and Satisfaction.*—The defendant may prove that the plaintiff accepted money or some other article in satisfaction of the claim, which in general will be a good defence to the action. But the acceptance of a less sum of money in satisfaction of a greater liquidated demand is no answer to an action for the balance: (*Cumber* v. *Wane*, 1 Smith's Leading Cases, 145; *Sibree* v. *Tripp*, 15 M. & W. 23.)

Fraud.

425. *Fraud.*—Proof of fraud in the party seeking to enforce a contract is a good defence. This may be by express misrepresentation or by indirectly misleading the defendant: (*Hill* v. *Gray*, 1 Stark. 434.)

Illegality.

426. *Illegality.*—Illegality is in general a defence to all actions on contract; thus, a party will not be permitted to recover, either for work and labour done, or materials provided, where the whole combined forms one entire subject-matter, made in violation of the provisions of an Act of Parliament: (*Bensley* v. *Bignold*, 5 B. & A. 335.) So money lent for the purpose of playing at an illegal game cannot be recovered: (*M'Kinnell* v. *Robinson*, 3 M. & W. 434.)

Contracts for spirituous liquors.

By 24 Geo. 2, c. 40, s. 12, it is provided that no action can be maintained for any debt or demand whatsoever for or on account of any spirituous liquors, unless such debt shall have been really and *bonâ fide* contracted at one time to the amount of twenty shillings or upwards; nor shall any particular article or item in any account or demand for distilled spirituous liquors be allowed or maintained, where the liquors delivered at one time, and mentioned in such article or item, shall not amount to the full value of twenty shillings at the least, and that without fraud or covin, and where no part of the liquors so sold or delivered shall have been returned, or agreed to be returned, directly or indirectly.

Contracts made on Sunday.

Statute 29 Car. 2, c. 7, s. 1, enacts that no person whatsoever shall do or exercise any worldly labour, business, or work of their ordinary callings upon the Lord's day or any part thereof, works of necessity or charity alone excepted. Any contract therefore entered into on a Sunday with a man in the exercise of his usual avocation, as, for instance, a contract for the sale

and warranty of a horse with a horse-dealer, on a Sunday is void, and the horse-dealer cannot recover upon it: (*Fennell* v. *Ridler*, 5 B. & C. 408.)

Usury.

427. *Usury.*—By statute 12 Ann, st. 2, c. 16, it is enacted that any contract whereby interest at a higher rate than 5 per cent. is allowed shall be absolutely void, and the lender, in the event of his actually receiving any portion of such illegal interest, shall be liable, besides, to a penalty of treble the amount of the sum advanced. It is, however, provided by 2 & 3 Vict. c. 37 (continued by subsequent Acts) that after the passing of that Act (viz., after 29th July, 1839) "no bill of exchange or promissory note made payable at or within twelve months after the date thereof, or not having more than twelve months to run, nor any contract for the loan or forbearance of money above the sum of 10*l.* sterling," shall be affected by any statute in force for the prevention of usury; but subject to a proviso "that nothing therein contained shall extend to the loan or forbearance of any money upon security of any lands, tenements, or hereditaments, or any estate or interest therein;" and also to a proviso, "that nothing in the Act contained shall be construed to enable any person to claim, in any Court of Law or Equity, more than five per cent. interest on any account, or on any contract or engagement, notwithstanding they may be relieved from the penalties against usury, unless it shall appear to the Court that any different rate of interest was agreed to between the parties;" and lastly, to a proviso, "that nothing therein contained should extend or be construed to extend, to repeal or affect any statute relating to pawnbrokers, but that all laws concerning pawnbrokers shall remain in full force to all purposes whatsoever, as if this Act had not been passed."

Immorality.

428. *Immorality.*—A party to an immoral contract cannot recover upon it: (*Jennings* v. *Throgmorton*, R. & M. 251.)

Tender.

429. *Tender.*—The plea of tender must be accompanied with a payment of the money into Court, and if it be satisfactorily proved that the tender was made before action brought, that will entitle the defendant

to his costs. A tender, in order to operate as a defence to the action, must appear to have been made unconditionally and of the whole amount due: (*Evans* v. *Judkins*, 4 Camp. 156.) The tender must also be continuing, for a subsequent demand and refusal vitiates the tender: (*Rivers* v. *Griffith*, 5 B. & A. 630.)

Payment.

430. *Payment.*—Proof of payment before action brought is of course a complete defence to any action.

Assumpsit for Use and Occupation.

Evidence in particular actions.

431. *Evidence for the Plaintiff.* — In order to sustain this action, the plaintiff must prove,

1st. The plaintiff's title.

Assumpsit for use and occupation.

If the defendant has, by payment of rent or otherwise, acknowledged the title of the plaintiff, that will be sufficient proof, as the defendant will be estopped from denying his landlord's title (*Cooke* v. *Loxley*, 5 T. R. 4; *Phipps* v. *Scalthorpe*, 1 B. & A. 50), and it is not material in such case that the plaintiff should have the legal estate: (*Hull* v. *Vaughan*, 6 Price, 157.) But if the defendant did not come in under the plaintiff, or has in some other way recognized his title, the plaintiff can only recover rent from the time the legal estate vested in him: (*Cobb* v. *Carpenter*, 2 Camp. 13, n.)

2nd. The occupation of the defendant.

It is necessary to show that the defendant did occupy the premises, but a constructive occupation is in some cases sufficient: (*Pinero* v. *Judson*, 6 Bing. 206.) An agreement to take premises without some proof of occupation is insufficient: (*Edge* v. *Stafford*, 1 C. & J. 391.)

3rd. The situation of the premises.

It is not in general necessary to give evidence of the local situation of the premises, but if the foundation of the jurisdiction of the Court be that the cause of action arose within the district, the situation of the premises becomes material, and must be proved.

Defences.

432. *Defences.*—The principal defences to this kind of action are—

1st. Lease under seal, in which case the action should be in a different form.

2nd. That the plaintiff's title has expired.

The defendant may show that, since he became tenant, the plaintiff's title has expired, though he cannot impeach his title: (*Holmes* v *Poutin*, Peake, 99; *Prentice* v. *Elliot*, 5 M. & W. 606.)

3rd. That the defendant's occupation had determined before the accruing of the rent sought to be recovered.

For this purpose any determination of the occupation, as by eviction or by agreement, is sufficient: (*Whitehead* v. *Clifford*, 5 Taunt.. 518; *Walls* v. *Atcheson*, 3 Bing. 462; *Harland* v. *Bromley*, 1 Stark. 455.)

4th. That the defendant had been treated by the plaintiff as a trespasser: (*Birch* v. *Wright*, 1 T. R. 378.)

5th. The Statute of Limitations.

6th. Illegality, such as, that the premises had been knowingly let for an immoral purpose: (*Crisp* v. *Churchill*, 1 B. & P. 340.)

7th. That the plaintiff had distrained goods, and sold them for a sum equal to the amount of rent due; but unless the goods distrained have actually realized that amount, it is no defence that they were really worth so much: (*Efford* v. *Burgess*, 1 M. & Rob. 23.)

Actions on Bills of Exchange.

Actions on bills of exchange.

Evidence for the plaintiff.

433. *Evidence for the Plaintiff.*—In an action by the drawer against the acceptor, the plaintiff must produce the bill, and prove that the acceptance is in the defendant's handwriting: (2 Arch. N. P. 5.)

Drawer v. Acceptor.

If the drawer takes up a bill dishonored by the acceptor, he may sue the acceptor for the amount. In such case he will have to prove, 1st, the acceptance; 2nd, the presentment to the defendant, and his refusal to pay; 3rd, the return of the bill to, and payment thereof by, the plaintiff: (Roscoe N. P. 211.)

Payee v. Acceptor.

In an action by the payee against the acceptor, evidence of the acceptance must be given, and that will, under ordinary circumstances, be all the proof required. An acceptance, in order to be effectual, is required by stat. 1 & 2 Geo. 4, c. 78, to be in writing. If the acceptance be conditional, it should be so set out and proved, and it seems that a variance in this respect would be fatal: (*Langston* v. *Corney*, 4 Camp.

177.) Since 1 & 2 Geo. 4, c. 28, a special acceptance is an acceptance payable at a banker's or other place, *and not otherwise or elsewhere.* In the case of a special acceptance, it is necessary to prove a presentment at the proper place: (*Selby* v. *Eden*, 3 Bing. 611.)

Indorsee v. *Indorser.*

The proofs necessary in an action by an *Indorsee* v. *Indorser*, are,

1st. Proof of the acceptance.

2nd. Proof of the indorsement or indorsements which are not admitted by the acceptance: (*Smith* v. *Chester*, 1 T. R. 654.)

Payee v. *Drawer.*

In an action by the payee of a bill against the drawer, prove,

1st. The drawing of the bill.

2nd. Presentment to the acceptor.

3rd. His default.

4th. Due notice to the drawer of its dishonour.

A written notice of dishonour is not necessary: (*Crosse* v. *Smith*, 1 M. & S. 545.) The notice should in general be sent on the day after it comes to the knowledge of the sender, at furthest: (*Williams* v. *Smith*, 2 B. & A. 496.)

Indorsee v. *Drawer.*

434. *Drawer.*—The proofs in an action by an indorsee against the drawer, are the same as in an action by the payee against the drawer, with the additional proof of the indorsements: (Roscoe N. P. 221.)

Indorsee v. *Prior Indorser.*

435. *Indorser.*—In an action between an indorsee and a prior indorser, it will be necessary to prove,

1st. The indorsement by the defendant.

2nd. The indorsements between that of the plaintiff and that of the defendant, if disputed.

3rd. Presentment to the acceptor, and dishonour.

4th. Due notice of the dishonour to the defendant.

The indorsement of the defendant admits the drawing, acceptance, and all prior indorsements, so that these will not be required to be proved: (*Lambert* v. *Oakes*, 1 Ld. Raym. 443; *Critchlow* v. *Parry*, 2 Camp. 182.)

Defence to an action on a bill of exchange.

436. *Defence.*—Evidence for the defendant.

1. Any of the special defences enumerated *ante.*

2. No stamp, or a wrong one, is a complete defence to an action on a bill: (*Dawson* v. *Macdonald*, 2 M. & W. 26.)

3. Any material alteration of the bill, unless made with the defendant's consent, and it rests with the plaintiff to explain such an alteration: (*Clifford* v. *Parker*, 2 M. & Gr. 909.)

4. Fraud is a defence to any action on a bill against every one, except an innocent holder for value.

5. Forgery of any signature on the bill which requires to be proved.

6. Want of consideration is a defence in an action between immediate parties to the bill. The presumption of law is, that every bill is given for a good consideration, and it lies on the plaintiff to make out a *prima facie* case to show want of consideration, before the defendant can be called upon to give any evidence of a consideration having been given.

7. Illegality of consideration is a defence in actions between parties who are privy to the illegality, and those to whom they have passed the bill without value; but a *bonâ fide* holder for value may recover on such bills: (*Wyat* v. *Bulmer*, 2 Esp. 538.)

8. Payment or satisfaction.

9. Discharge or waiver.

10. Giving time to a principal discharges a surety; and, therefore, giving time to the acceptor, discharges the drawer and indorsers: (*English* v. *Darley*, 2 B. & P. 61.) So, giving time to any prior party, discharges subsequent ones: (*Hall* v. *Cote*, 4 A. & E. 577.)

ACTIONS ON PROMISSORY NOTES.

Actions on promissory notes.

437. *Evidence for the Plaintiff.*—In an action by the payee of a note against the maker, the plaintiff must produce the note, and prove the defendant's handwriting to it. *Payee* v. *Maker*.

In an action on a promissory note, by an indorsee against the maker, the plaintiff must prove the making of the note by the defendant, and the indorsement to the plaintiff, if denied. *Indorsee* v. *Maker*.

The proofs necessary in an action by an indorsee against a prior indorser, are, *Indorsee* v. *Indorser*.

1st. The indorsements.
2nd. The presentment to the maker for payment.
3rd. Notice of dishonour to the defendant.

Evidence for defendant.

438. *Evidence for the Defendant.*—The same defences that are applicable to bills of exchange, are in general applicable to actions on promissory notes; it is therefore, unnecessary to repeat them here.

Assumpsit on an Attorney's Bill.

Assumpsit on an attorney's bill.

439. *Evidence for the Plaintiff.*—In an action upon an attorney's bill, the plaintiff must prove,

1st. His retainer by the defendant.
2nd. That the business was done, though it is not necessary to prove every item: (*Philips* v. *Roach*, 1 Esp. D. N. P. 10.)
3rd. That he had, one month or more before the commencement of the suit, delivered a signed bill to the defendant, according to the provisions of 6 & 7 Vict. c. 73, s. 37.

That section further provides that any Judge may authorize an attorney to commence an action before the expiration of a month from the delivery of the bill, if there be reasonable cause to suspect that the defendant is about to leave England.

440. *Evidence for the Defendant.*

Evidence for the defence.

1. The delivery of a former bill, is conclusive against an increase of charge, though real errors and omissions are to be allowed: (*Loveridge* v. *Botham*, 1 B. & P. 49.)

2. If the charges sought to be recovered have been occasioned by the plaintiff's want of proper caution, that is a defence to the action: (*Huntley* v. *Bulwer*, 6 New Ca. 111.)

3. If the plaintiff has been guilty of such gross negligence as to deprive the defendant of all benefit, that is a defence to the action, but if the loss be partly attributable to other causes, the negligence of the plaintiff is no defence: (*Templar* v. *M'Lachlan*, 2 N. R. 136.)

4. That the plaintiff was at the time uncertificated.

5. That the legal proceeding, in which the costs were incurred, is not yet completed: (1 Ch. Ar. Pr. 89.)

6. That the business was done for the benefit of an unqualified person.

7. That the plaintiff had agreed to do the business without charging for it: (*ib.*)

8. Any of the special defences *ante*.

Assumpsit on Surgeon's or Apothecary's Bill.

441. *Evidence for the Plaintiff.*—An apothecary or surgeon must prove, Assumpsit on surgeon's or apothecary's bill.

1st. That he has a legal right to practise as such.

For no person can sue for work done as a surgeon, or medicines supplied, unless he is duly admitted to practise: (*Bensley* v. *Bignold*, 5 B. & Al. 335.)

2nd. He must prove the work done, or the medicines administered.

442. *Evidence for the Defendant.*

1. If the defendant has received no benefit in consequence of the plaintiff's want of skill, the latter cannot recover: (*Kannew* v. *M'Mullen*, Peake, 59.) Evidence for the defence.

2. If the plaintiff has fraudulently induced the defendant to employ him, and has failed in his cure, he is not entitled to recover for medicines or attendance: (*Hupe* v. *Phelp*, 2 Stark. 480.)

3. That he did the work in the character of a physician, whether he be really such or not: (*Lipscome* v. *Holmes*, 2 Camp. 441.) For physicians are not entitled to recover for work done as such, unless it be on a special agreement: (*Weitch* v. *Russell*, 1 Car. & M. 362.)

Assumpsit for Servants' Wages.

443. *Evidence for the Plaintiff.*—By the 64th section of 9 & 10 Vict. c. 95, minors are empowered to sue for wages in the County Courts. Assumpsit for servants' wages. Minors may sue.

In an action by a servant against his master, the plaintiff must prove,

1st. The hiring, of which service will be evidence.

2nd. The length of time of service.

3rd. The amount of wages due.

A general hiring is a hiring for a year, and if during the year the master dismisses his servant without reasonable cause, the latter may recover a whole year's wages, and it is no objection that the wages are payable monthly: (*Beeson* v. *Collyer*, 4 Bing. 309; *Fawcett* v. *Cash*, 5 B. & Ad. 904.) And so if the servant leaves his master's employ before the end of

the year without cause, he cannot recover any part of his wages: (*Huttman* v. *Boulnois*, 2 C. & P. 510.) With regard to menial servants, however, the rule is, that a servant is entitled to a month's warning or a month's wages, and the master is entitled to dismiss such servant on giving him a month's wages: (*Robinson* v. *Hindman*, 3 Esp. 235.)

ASSUMPSIT FOR NOT ACCEPTING GOODS.

Assumpsit for not accepting goods.

444. *Evidence for the Plaintiff.*—In an action for not accepting goods sold, the plaintiff will have to prove,

1st. The contract and breach.

2nd. The performance of all conditions precedent on his part.

3rd. The amount of damage sustained by the plaintiff.

The Statute of Frauds, 29 Car. 2, c. 3, s. 17, enacts that no contract for the sale of any goods, wares, and merchandizes, for the price of 10*l.* sterling, or upwards, shall be allowed to be good, except the buyer shall accept part of the goods so sold, and actually receive the same, or give something in earnest to bind the bargain or in part of payment, or that some note or memorandum in writing of the said bargain be made and signed by the parties to be charged by such contract, or their agents thereunto lawfully authorized.

Evidence for the defence.

445. *Evidence for the Defendant.*—If the bulk of goods sold by sample does not accord with the sample, the defendant may use that as a defence: (*Hibbert* v. *Shee*, 1 Camp. 113.) So also if the goods were furnished under a special contract, with a condition annexed, which the goods delivered did not satisfy: (*Grounsel* v. *Lamb*, 1 M. & W. 352.)

The defendant may also rely upon any of the special defences described above.

ASSUMPSIT FOR NOT DELIVERING GOODS.

Assumpsit for not delivering goods.

446. *Evidence.*—In an action against the vendor of goods for not delivering them, the plaintiff will, in general, have to prove,

1st. The contract and the breach.

2nd. The performance of all conditions precedent on his part.

3rd. The amount of damages.

ASSUMPSIT FOR GOODS SOLD AND DELIVERED.

Assumpsit for goods sold and delivered.

447. *Evidence for the Plaintiff.* — In actions for goods sold and delivered, the plaintiff must prove,

1st. *The contract,* which may be proved either by the production of a written agreement, a verbal request, or by evidence of the delivery of the goods to, and receipt of them by, the defendant: (*Bennett* v. *Henderson,* 2 Stark. 550.)

2nd. *The delivery* must be proved, or something done equivalent to a delivery; as, for instance, putting it in the vendee's power to take away the goods: (*Smith* v. *Chance,* 2 B. & A. 755.)

The delivery may be either to the vendee himself, or to a third person at his request: (*Bull* v. *Sibbs,* 8 T. R. 328.) Thus, delivery to a carrier at the defendant's request, is a delivery to the defendant himself: (*Dutton* v. *Solomonson,* 3 B. & P. 584.) Proof of delivery to a partner is evidence against another partner. So is delivery to an agent. Delivery of goods to a man's wife by her order, is in general evidence against the husband in an action for such goods: (Bac. Abr., Baron & Feme, H.) In order to make a father liable for goods supplied to his infant child, there must be some circumstances proved which would warrant the conclusion that the father hath authorized his child to pledge his credit: (*Baker* v. *Keen,* 2 Stark. 501.) A master is not responsible for goods ordered by his servant in his name, but without his authority, unless he has been in the habit of paying for goods so ordered: (*Maunder* v. *Conyers,* 2 Stark. 281.)

Acceptance.

In some cases it is not sufficient to prove a delivery only, but in cases where the value of the goods exceeds 10*l.*, and there is no memorandum in writing and no earnest has been given, an actual acceptance by the defendant in order to take them to his possession as owner must be proved: (*Philips* v. *Bistolli,* 2 B. & C. 513.)

3rd. *The value,* which is either the actual value at the time of the sale, or a sum fixed by the contract.

Evidence for the defence.

448. *Evidence for the Defendant.*

1st. The defendant may rely upon any special defence.

2nd. He may prove in reduction of damages the bad quality of, or any defect in, the article sold: (*Basten* v. *Butter,* 7 East, 479; *Mondel* v. *Steel,* 8 M. & W. 858.)

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3rd. That the goods were sold on an unexpired credit.

4th. Illegality of the transaction.

Assumpsit for Work and Labour.

Assumpsit for work and labour.

449. *Evidence for the Plaintiff.*—In an action for work and labour, the plaintiff must prove,

1st. The contract, express or implied.

2nd. The performance of the work.

3rd. The value or the amount contracted for.

Evidence for the defendant.

450. *Evidence for the Defendant.*—The defendant may, if the work has not been executed according to the contract, repudiate it and the plaintiff cannot in such case recover: (*Ellis* v. *Hamlen*, 3 Taunt. 52.) So, if the work has proved entirely useless: (*Farnsworth* v. *Garrard*, 1 Camp. 38.) But if the defendant has derived *some* benefit from the work done, he must pay *pro tanto*: (*ib.*) The defendant may also rely upon any special defence.

Assumpsit for Money Paid.

Assumpsit for money paid.

451. *Evidence.*—The plaintiff in an action for money paid must prove,

1st. The payment of the money.

There must be evidence of the payment of *money*, and proof of giving a security or of the transfer of stock is not sufficient: (*Taylor* v. *Higgins*, 3 East, 169; *Maxwell* v. *Jameson*, 2 B. & A. 51; *Jones* v. *Brinley*, 1 East, 1.)

2nd. The payment must be proved to have been at the defendant's request.

But a subsequent assent to the payment will be evidence of a previous request: (1 Saund. 264, n.) So also payment by the plaintiff under a legal obligation will be equivalent to a previous request. Thus, one surety, who has been compelled to pay the debt, may, under this form of action, recover against his co-surety: (*Exall* v. *Partridge*, 8 T. R. 310.)

Assumpsit for Money Lent.

Assumpsit for money lent.

452. *Evidence.*—In an action for money lent, the plaintiff must prove the loan of the money. This may be proved by a promissory note (*Story* v. *Atkins*, 2 Strange, 719), or by an I.O.U. (*Douglas* v. *Holmes*, 12 A. & E. 641), or by evidence of the payment of money, coupled with some circum-

stances that will lead to the inference that it was meant as a loan: (*Cary* v. *Garish*, 4 Esp. 9.) But the mere payment of money, without more, will be presumed to be in liquidation of an antecedent debt: (*Welch* v. *Seaborn*, 1 Stark. 474.)

Assumpsit for Money Had and Received.

Assumpsit for money had and received.

453. *Evidence.*—The plaintiff in this action must prove,

1st. The receipt of the money by the defendant.

2nd. That the plaintiff has a right to recover it.

It may be laid down generally, that whenever money has been received by the defendant, which in equity and good conscience belongs to the plaintiff, such money may be recovered under this form of action. Thus, where money has been paid on a consideration that has wholly failed, it may be recovered back: (*Shove* v. *Webb*, 1 T. R. 732.) Or if money be paid under a mistake of facts, or it has been obtained by fraud, and the party receiving it has no claim in conscience to retain, it may be recovered as money had and received: (*Bize* v. *Dickason*, 1 T. R. 285; *Crockford* v. *Winter*, 1 Camp. 124.) Where money has been paid on an executory illegal contract, or where, though the contract be executed, the plaintiff is not *in pari delicto* with the defendant, or the money remains in the hands of a stakeholder, such money may be recovered under this form of action: (*Tappenden* v. *Randall*, 2 B. & P. 467; *Jaques* v. *Witley*, 1 H. Bl. 65; *Cotton* v. *Thurland*, 5 T. R. 405.)

Assumpsit for Interest.

Assumpsit for interest.

454. *Evidence.*—At common law interest is not in general recoverable, except on bills of exchange and promissory notes, unless there be a promise to pay interest, either express or implied: (*Page* v. *Newman*, 9 B. & C. 381.) But it is enacted by the 28th and 29th sections of 3 & 4 Will. 4, c. 42, that upon all debts or sums certain, payable at a certain time or otherwise, the Jury, on the trial of any issue, or any inquisition of damages, may, if they shall think fit, allow interest to the creditor, at a rate not exceeding the current rate of interest, from the time when such debts or sums certain were payable, if such

debts or sums be payable by virtue of some written instrument at a certain time, or if payable otherwise, then from the time when demand of payment shall have been made in writing, so as such demand shall give notice to the debtor that interest will be claimed from the date of such demand until the term of payment; provided that interest shall be payable in all cases in which it is now payable by law.

Section 29 further enacts, that the Jury, on the trial of any issue, or on any inquisition of damages, may, if they shall think fit, give damages in the nature of interest, over and above the value of the goods at the time of the conversion or seizure in all actions of trover or trespass *de bonis asportavis*, and over and above the money recoverable in all actions on policies of assurance made after the passing of this Act.

ASSUMPSIT ON AN ACCOUNT STATED.

Assumpsit on an account stated.

455. *Evidence.*—In order to entitle the plaintiff to recover in this form of action, he must prove an absolute acknowledgment of the debt being due on the part of the defendant, and a conditional acknowledgment only is not sufficient: (*Evans* v. *Verity*, 4 R. & M. 239.) If the defendant has not admitted the amount of the debt, it must be proved *aliunde*: (*Dickson* v. *Deveridge*, 2 C. & P. 109.) The account must be stated before the commencement of the action: (*Spencer* v. *Parry*, 3 A. & E. 331.)

DEBT ON BOND.

Action of debt on bond.

456. *Evidence for the Plaintiff.*—In an action on a bond the plaintiff must produce the bond, and call the attesting witness, or, if he be dead, any other person conversant that can prove the handwriting (Roscoe N. P. 401), and Mr. Archbold, in his County Court Practice, p. 68, observes that "in the case of a money bond, it should seem that it will be a sufficient compliance with the statute 4 & 5 Anne, c. 16, s. 13, to give the plaintiff judgment for what is due to him for principal and interest; although in the Superior Courts the plaintiff is entitled to judgment for the penalty, and the writ of execution is afterwards indorsed to levy only the sum actually due for principal and interest and costs."

457. *Evidence for the Defendant.*

Evidence for the defendant.

1. Any material alteration of the bond is a defence to an action upon it.
2. Proof that the signature is a forgery.
3. Any evidence to show that the bond was delivered as an *escrow* on a *condition not performed.*
4. Proof that the bond has been cancelled or released.
5. Any special defences applicable.

Debt for Rent.

458. *Evidence.*—In an action for rent the plaintiff should produce the lease, or other admissible evidence of the tenancy, and if he sues as assignee of the reversion, he may also have to prove his own title. Evidence should also be given of the amount of rent in arrear. Action of debt for rent.

The defendant may, in answer to the claim, prove,

1st. Payment.

2nd. That he has expended the amount in repairs, by the plaintiff's direction: (Gilb. on Debt, 442.)

3rd. That he has been compelled to pay a charge upon the land: (*Dyer* v. *Rowley*, 2 Bing. 94.)

4th. Any special defence applicable.

Covenant.

459. *Evidence.*—In an action of covenant the plaintiff must prove, Covenant.

1st. The deed in which the covenant is, either expressly or impliedly, contained.

2nd. The breach of such covenant.

3rd. The damage sustained in consequence.

The evidence for the defendant in this action is in general much the same as in an action on a bond.

We come now to actions for Torts.

Trespass to Land.

460. *Evidence for the Plaintiff.*—In order to maintain an action for trespass to land the plaintiff must prove, Trespass to land.

1st. That he was, at the time when the trespass was committed, in possession, either actual or constructive, of the *locus in quo*: (*Topham* v. *Dent*, 6 Bing. 516.) Any possession is sufficient against a wrong-doer: (*Graham* v. *Peat*, 1 East, 246.) But a party who enters by force and without title cannot maintain trespass against the prior occupant who reinstates himself in possession by force: (*Browne* v. *Dawson*, 12 A. & E. 624.)

2nd. As this is a local action, the plaintiff must show that the *locus in quo* is situated within the limits of the Court's jurisdiction.

3rd. The trespass must be proved. Both the party who committed the trespass, and all aiding and abetting him, are liable: (Com. Dig. Tresp. c. 1.) And a person may become a trespasser by previous command or subsequent assent to the act, provided the trespass be committed for his use: (*Barker* v. *Braham*, 3 Wils. 377; (*Wilson* v. *Barker*, 4 B. & Ad. 614.) Neither a *feme covert*, however, nor an infant, can make him or her liable as a trespasser by a prior command or subsequent assent: (Inst. 180, b. note 4.) If a party enters under an authority given by the law, but afterwards abuses that authority, he thereby becomes a trespasser *ab initio*: (*Six Carpenters' case*, 8 Rep. 146, a.) This, however, does not apply to a landlord who enters to distrain for rent: (see 11 Geo. 2, c. 19, s. 19.)

461. *Evidence for the Defence.*—The defendant, in answer to this action, may prove,

1st. That he had a right to the possession, or that he entered by the command of one who had such right, in which case the Court will be ousted of its jurisdiction.

2nd. He may disprove the defendant's possession: (1 Arch. N. P. 427.)

3rd. He may show any facts in justification, such as a licence, either express or to be implied from circumstances, a right of way, or of common, or the like: (1 Arch. N. P. 467.)

4th. The Statute of Limitations.

5th. Payment into Court: (1 Arch. N. P. 470.)

Trespass to Personal Property.

Trespass to personal property.

462. *Evidence for the Plaintiff.*—In order to entitle himself to maintain an action of trespass for an injury done to personal property, the plaintiff must prove,

1st. That he has the immediate possession of the property (*Hall* v. *Pickard,* 3 Camp. 187); or at least a right to the immediate possession (*Lotan* v. *Cross,* 2 Camp. 464); but mere possession without proof of ownership is sufficient against a wrong-doer: (Com. Dig. Tresp. B. 4.)

2nd. That the injury is both *wilful* and *immediate,* in which case trespass is his only remedy: (*Tripe* v. *Potter,* 8 T. R. 191; *Moreton* v. *Hardern,* 4 B. & C. 227.)

3rd. That the injury is *immediate* but not *wilful,* in which case the plaintiff may bring an action of trespass or on the case at his option: (*Moreton* v. *Hardern,* 4 B. & C. 227; Notes to *Scott* v. *Shepherd,* 1 Smith L. C. 218.)

4th. That the trespass has been committed by the defendant, or by some one instigated by him.

463. *Evidence for the Defence.* — The defendant may set up by way of defence,

1st. Property in himself.

2nd. A justification, as for instance under a *fi. fa.*: (1 Arch. N. P. 484.)

3rd. Statute of Limitations.

Trespass for Assault and Battery.

Trespass for assault and battery.

464. *Evidence for the Plaintiff.*—In any action of trespass for assault and battery the plaintiff must prove,

1st. That the defendant, or some person by his command, or at his instigation, has committed the assault and battery. An attempt to do a corporal injury to another, coupled with a present ability, as holding up a weapon at a man within reach, is an assault: (*Genner* v. *Sparkes,* 1 Salk. 79.) So, riding after a person

and obliging him to run away to avoid being beaten, is an assault: (*Mortin* v. *Shoppee*, 3 C. & P. 373.)

2nd. Evidence may be given of the circumstances which accompany and give a character to the trespass, in order to enhance the damages: (*Bracegirdle* v. *Orford*, 2 M. & S. 79.)

465. *Evidence for the Defendant.*

Evidence for the defendant.

1st. That the plaintiff made the first assault, and that the defendant's battery was in self-defence: (Co. Litt. 212, b.)

2nd. That the assault consisted in his turning the plaintiff out of his house, who was making a disturbance there: (1 Arch. N. P. 500.) If the plaintiff enters forcibly into the defendant's house, the latter may resist force by force without any previous request to depart: (Roscoe N. P. 473.)

3rd. That the assault was a reasonable chastisement which the defendant had authority to administer: (Roscoe N. P. 474.)

4th. That the assault was committed under process or authority of law: (Roscoe N. P. 474.)

5th. Proof of a summary conviction or dismissal of the charge by two justices on a complaint in respect of the same assault, which may be by a certificate under 9 Geo. 4, c. 31, s. 27.

TRESPASS FOR FALSE IMPRISONMENT.

Trespass for false imprisonment.

466. *Evidence for the Plaintiff.*—The plaintiff, in an action for false imprisonment, must prove the imprisonment, and the damage arising therefrom, if any. It is not necessary to prove that he was actually put into prison, but proof of his being detained against his will only is sufficient: (1 Arch. N. P. 506.)

467. *Evidence for the Defendant.*—The defendant, in answer, may prove

1st. That there was no arrest or detention.

2nd. He may justify under process of law, civil or criminal.

3rd. He may plead the Statute of Limitations: (1 Arch. N. P. 519.)

Case for a Nuisance.

468. *Evidence for the Plaintiff.*—The plaintiff, in an action on the case for a nuisance, must prove, Action on the case for a nuisance.

1st. His title to the premises; but in general mere possession is sufficient.

2nd. The nuisance complained of.

3rd. He must prove, that the nuisance was occasioned by the defendant, or that the defendant permitted a nuisance previously existing to continue: (*Penruddock's case,* 5 Rep. 101, a.) But where the nuisance had been established by a former owner, a request to the defendant to remove or abate the nuisance should be proved: (*ib.*)

4th. the damages sustained.

469. *Evidence for the Defendant.*—The defendant may, in answer, deny any of the facts which the plaintiff is required to prove, and may also plead the Statute of Limitations. Defence.

Case for Obstruction of Light or Air.

470. *Evidence.*—The plaintiff must in general prove in this action, Action on the case for obstruction of light and air.

1st. That the plaintiff was possessed of the house or premises, the light and air of which have been obstructed.

2nd. His right to unobstructed light and air, which is in general made out by proof of twenty year's user. Proof of user at a more early period is not sufficient if it has been discontinued for twenty years, or in some cases for a less period: (*Lawrence* v. *Obee,* 3 Camp. 514; *Moore* v. *Rawson,* 3 B. & C. 332.)

3rd. There must be proof of the obstruction; but it is sufficient to prove that the plaintiff cannot enjoy his lights in so free and ample a manner as usual: (*Cotterell* v. *Griffiths,* 4 Esp. 69.)

Case for Disturbance of Common.

471. *Evidence for the Plaintiff.*—In an action for disturbance of common, the plaintiff must prove, Action on the case for disturbance of common.

1st. His right of common, which may in general

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be by proof of enjoyment for thirty years: (see 2 & 3 Will. 4, c. 71.)

2nd. The disturbance must be proved, which may be by another commoner as well as by a stranger: (*Atkinson* v. *Teasdale*, 2 W. Bl. 817.) And it is no defence that the plaintiff himself has been guilty of a surcharge: (*Hobson* v. *Todd*, 4 T. R. 71.)

3rd. The damage. In an action against a stranger the smallest damage, as carrying away the dung from the common, is sufficient to maintain the action: (*Pindar* v. *Wadsworth*, 2 East, 154.) And in an action against another commoner for surcharging, it is sufficient to prove that the defendant put on the common more cattle than he had a right to do, without proving any specific damage: (*Hobson* v. *Todd*, 4 T. R. 71.)

472. *Evidence for the Defence.*—If the defendant *bonâ fide* disputes the plaintiff's title, the Court has no jurisdiction to proceed.

Case for Disturbance of a Way.

Action on the case for disturbance of way.

473. *Evidence for the Plaintiff.*—The plaintiff in this action must prove,

1st. His right of way, which will in general be established by proof of open enjoyment as of right for twenty years: (see 2 & 3 Will. 4, c. 71.)

2nd. The disturbance by the defendant.

Defence.

474. *Evidence for the Defendant.*—The defendant may deny or justify the disturbance, but if any question of title arises, the Court is ousted of its jurisdiction.

Case for Disturbance of a Water-course.

Action on the case for disturbance of a watercourse.

475. *Evidence.*—The proofs for the plaintiff in general, are,

1st. The possession of a mill, meadow, or other tenement in respect of which the right of water is enjoyed.

2nd. The right to the water.

3rd. The disturbance.

4th. The damage: (Roscoe N. P. 348.)

Case for Disturbance of a Pew.

476. *Evidence.*—The right to a pew must be by prescription or a faculty, and must be annexed to a particular messuage; mere user of a pew, however long, if unconnected with a particular house, is not sufficient evidence of a right: (*Stocks* v. *Booth*, 1 T. R. 428.) When the occupiers of a certain house have used a pew for many years, the jury *may*, though they are not *bound* to do so, presume a faculty: (*Morgan* v. *Curtis*, 3 M. & R. 389; *Griffith* v. *Matthews*, 5 T. R. 296.)

Action on the case for the disturbance of pews.

Case for Negligence.

477. *Evidence for the Plaintiff.*—If, through the negligence of the defendant or of the defendant's servant, the plaintiff suffers any damage, the latter may maintain an action on the case for the injury: (*Brucker* v. *Fromont*, 6 T. R. 659.)

Action on the case for negligence.

In an action for negligent driving, actual negligence must be proved, and it is not sufficient merely to show an accident, unless it be of such a nature as to afford a presumption of negligence: (Roscoe N. P. 353.)

Negligent driving.

A master is not liable for an injury arising out of the conduct of his servant, unless there has been something to blame on the part of the servant: (*Jackson* v. *Tollett*, 2 Stark. 39.) Neither is a master answerable for the wilful and malicious act of his servant: (*M'Manus* v. *Crickett*, 1 East, 106.)

Negligence by servant.

The owner of a wild animal, such as a bear, which escapes and does damage, is liable to an action without proof of any notice of the animal's ferocity; but if damage is done by a domestic animal, the plaintiff must show that the defendant knew of the animal's ferocity: (B. N. P. 76.)

Wild animal.

If the owner of premises leaves any part of them in a dangerous state, whereby another suffers an injury, he is liable to an action: (*Leslie* v. *Pounds*, 4 Taunt. 649; *Bush* v. *Steinman*, 1 B. & P. 404.)

In all these cases the plaintiff will have to prove,

1st. The duty of the defendant.

2nd. The negligence.

3rd. The damage resulting to the plaintiff.

Defence.

478. *Evidence for the Defence.*—The defendant, in answer, may show,

1st. That there was no negligence on his part.

2nd. That the plaintiff might, by the exercise of ordinary care, have avoided the consequences of the defendant's negligence: (*Bridge* v. *Grand Junction Rail. Com.*, 3 M. & W. 244.)

3rd. In an action for keeping a mischievous animal it is a sufficient defence to show that the animal was properly at large, and that the accident was occasioned by the plaintiff's negligence: (*Brock* v. *Copeland*, 1 Esp. 203.)

CASE AGAINST A CARRIER.

Action on the case against a carrier.

479. *Evidence for the Plaintiff.*—The plaintiff in this action must prove,

1st. The defendant's character as carrier.

2nd. The contract between the plaintiff and the defendant, which will be implied by law if the delivery of the goods be proved.

3rd. The loss or injury to the goods, slight evidence of which will be sufficient in the absence of all proof on the part of the defendant: (*Griffiths* v. *Lee*, 1 C. & P. 110.)

Defence.

480. *Evidence for the Defence.*—The defendant, in answer, may,

1st. Disprove the loss or injury; or,

2nd. He may show that the value of the goods was above 10*l.*, and that they are enumerated in 1 Will. 4, c. 68, s. 1; and that he gave due notice.

3rd. He may plead the Statute of Limitations.

CASE FOR DECEIT.

An action on the case for deceit.

481. *Evidence.*—This action may be maintained for misrepresentation of solvency, misrepresentation of the value of property, and such like. The plaintiff will have to prove,

1st. The misrepresentation.

2nd. The consequent damage.

CASE FOR MALICIOUS ARREST.

Action on the case for

482. *Evidence.*—Though it is expressly provided by

9 & 10 Vict. c. 95, s. 58, that no action for any malicious prosecution can be brought in the County Courts, those Courts still have jurisdiction to entertain actions for malicious arrests. There does not seem to be any substantial reason for giving the new County Courts jurisdiction over the one class of cases and not over the other, but actions for malicious prosecutions are expressly excepted, whereas nothing is said as to the other class. a malicious arrest.

In an action for a malicious arrest, the plaintiff will, in general, have to prove,

1st. The suing out a *capias* or other process in the former action.

2nd. The arrest under it.

3rd. The determination of the suit.

4th. The defendant's malice and want of probable cause.

5th. The damage.

Case for Excessive Distress.

483. *Evidence.*—The plaintiff in this action will have to prove, An action on the case for excessive distress.

1st. That his goods were distrained; the seizure as a distress is sufficient: (*Sells* v. *Hoare*, 8 B. Moore, 453.)

2nd. That the distress was excessive. The landlord is not bound to calculate very nicely the value of the property seized, but he must take care that some reasonable proportion is kept between that and the sum for which he is entitled to take it: (*Willoughby* v. *Backhouse*, 2 B. & C. 823.) And if there be but one thing that can be taken, the landlord will not be liable in an action for an excessive distress.

Trover.

484. *Evidence for the Plaintiff.* — 1. In order to maintain an action of trover, the plaintiff must show, either that he is the owner of the goods sought to be recovered, and is entitled to the immediate possession of them;—*or*, that he has a special property in them, as a bailee or the like (*Nicholls* v. *Bastard*, 2 C. M. & R. 659);—*or*, as against a wrong-doer, that he was Action of Trover.

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possessed of the goods, without showing any property therein: (*Armory* v. *Delamirie*, 1 Stra. 505.)

2. He must prove a conversion of the goods. A refusal to deliver up goods on request is *primâ facie* evidence of such conversion: (2 Saund. 47, e.)

3. He must also prove the value of the goods or the amount of damages sustained.

Defence.

485. *Evidence for the Defendant.* — The defendant, in answer, may,

1st. Disprove the property or possession of the plaintiff.

2nd. He may show that he is entitled to a lien on the goods. In order, however, to sustain this defence the defendant must be prepared to show that he has actual possession of the goods, and that they had come rightfully to his hands: (*Kinloch* v. *Craig*, 3 T. R. 119; *Madden* v. *Kempster*, 1 Camp. 12.)

3rd. He may pay money into Court: (1 Arch. N. P. 611.)

4th. He may give a release in evidence: (*ib.*)

5th. He may plead the Statute of Limitations, which, when the possession was originally legal, will be presumed to have begun to run from the demand and refusal: (*Topham* v. *Braddick*, 1 Taunt. 577.)

Competency of advocate to give evidence.

486. *Competency of Advocate to give Evidence.*—It has been the practice of many Judges to exclude the evidence of a person acting as advocate in the cause, and even a party to the suit appearing in person has, in some Courts, been prevented from giving evidence in the case. Dowling, Serjt., a Judge of the Yorkshire Court, however, appears to have taken a different view of the question, and in the case of *M'Cullock* v. *Brown Simpson* (2 C. C. Chron. 327) he is reported to have said that "the County Court was a Court of an entirely new character, and the Act by which it was constituted expressly enacted that the parties to a suit should themselves be competent to give evidence; it could scarcely, therefore, be its intention to exclude an advocate, simply because he had previously stated to the jury the facts which he was afterwards to depose to upon oath. For, supposing a party chose

to conduct his own case, what was there to prevent him from making a speech of any length to the jury, and that, too, upon oath? Besides, even in the Courts of Common Law it was a constant occurrence for the attorney in the cause to be examined as a witness, and the case frequently turned almost wholly upon his evidence. He, therefore, decided that the evidence was admissible."

CAP. VII.

EXECUTION.

1. Execution within the District.

Against whom execution may issue.

487. *Against whom it may issue.*—Execution may issue against any party to the suit, whether plaintiff or defendant, but it cannot issue against persons not parties to the suit without a plaint and summons.

Rule 27.

Execution on judgment, when not to issue.

Rule 27. Execution on a judgment is not to issue by or against any person not a party to such suit, without a plaint and summons upon the judgment, the proceedings in which shall be the same as in ordinary cases.

Privilege of ambassadors.

The stat. 7 Anne, c. 12, s. 3, provides that no execution shall issue against the goods and chattels of an ambassador or public minister of any foreign prince or state, or of the domestic or domestic servant of such ambassador or public minister, unless such domestic be a trader within the bankrupt laws.

In what cases.

488. *In what Cases.*—Whenever default is made in the payment of money, in pursuance of an order made by the Judge, execution may issue against the goods of the debtor.

Section 94.

Court may award execution against goods.

Sect. 94. And be it enacted, that whenever the Judge shall have made an order for the payment of money, the amount shall be recoverable in case of default or failure of payment thereof forthwith, or at the time or times and in the manner thereby directed, by execution against the goods and chattels of the party against whom such order shall be made; and the Clerk of the said Court, at the request of the party prosecuting such order, shall issue under the seal of the Court a writ of *fieri facias* as a warrant of execution to the High Bailiff of the Court, who by such warrant shall be empowered to levy, or cause to be levied, by distress and sale of the goods and chattels of such party such sum of money as shall be so ordered, where-

soever they may be found within the district of the Court, whether within liberties or without, and also the costs of the execution; and all constables and other peace officers within their several jurisdictions shall aid in the execution of every such warrant.

But execution cannot issue until after default made.

Section 95. Execution not to issue till after default in payment of some instalment, and then it may issue for the whole sum due.

Sect. 95. And be it enacted, that if the Judge shall have made any order for payment of any sum of money by instalments, execution upon such order shall not issue against the party until after default in payment of some instalment according to such order, and execution or successive executions may then issue for the whole of the said sum of money and costs then remaining unpaid, or for such portion thereof as the Judge shall order, either at the time of making the original order, or at any subsequent time, under the seal of the Court.

For what amount it may issue.

489. *For what Amount it may issue.*—Execution must in general be issued for the amount specified in the order, but where there are cross judgments, execution shall be sued out for the balance only, after deducting the smaller from the larger judgment.

490. *Cross Judgments.*—In the case of cross judgments, it is enacted by section 93 as follows:—

Section 93. Cross judgments.

Sect. 93. And be it enacted, that if there shall be cross judgments between the parties, execution shall be taken out by that party only who shall have obtained judgment for the larger sum, and for so much only as shall remain after deducting the smaller sum, and satisfaction for the remainder shall be entered, as well as satisfaction on the judgment for the smaller sum, and if both sums shall be equal, satisfaction shall be entered upon both judgments.

Instalments.

491. *Instalments.*—Where the Judge has made an order for payment by instalments, execution shall not issue until default made in the payment of some instalment, "and execution or successive executions may then issue for the whole of the said sum of money and costs then remaining unpaid, or for such

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portion thereof as the Judge shall order, either at the time of making the original order, or at any subsequent time, under the seal of the court:" (sect. 95.)

At what time it may issue.

492. *At what Time it may issue.*—Execution cannot issue until after default made in payment of the whole debt or any instalment.

If the defendant be, through sickness or poverty, unable to pay, the Judge may suspend or stay execution.

Section 105.

Power to Judge to suspend execution in certain cases.

Sect. 105. And be it enacted, that if it shall at any time appear to the satisfaction of the Judge, by the oath or affirmation of any person, or otherwise, that any defendant is unable, from sickness or other sufficient cause, to pay and discharge the debt or damages recovered against him, or any instalment thereof ordered to be paid as aforesaid, it shall be lawful for the Judge, in his discretion, to suspend or stay any judgment, order, or execution given, made, or issued in such action, for such time and on such terms as the Judge shall think fit, and so from time to time until it shall appear by the like proof as aforesaid that such temporary cause of disability has ceased.

The following is the form of an

ORDER TO SUSPEND ORDER OR JUDGMENT.

No.

In the County Court of *at*

(Seal.)

Between { *A. B., Plaintiff,* *and* *C. D., Defendant.* }

It is ordered, that an order of this Court bearing date [or *the judgment herein,* or *execution herein issued against the goods or person of the defendant*] *be suspended until* [*upon payment of costs by* ——]

Given under the seal of the Court, this *day of* 18 .

By the Court,

Clerk.

The following is the form of a

WARRANT OF EXECUTION AT THE SUIT OF A PLAINTIFF.

No.

In the County Court of at

(Seal.)

Between { *A. B., Plaintiff,* *and* *C. D., Defendant.* }

Whereas at a County Court duly holden at on the day of at within the jurisdiction of the said Court, before the Judge of the said Court, the said plaintiff, by the consideration and judgment of the said Court, recovered against the said defendant the sum of £ for a certain debt before that time due and owing to the said plaintiff [or *for certain damages by him sustained, and by the said Court awarded to be paid to him the said plaintiff*] *together with the costs of suit, by the said plaintiff in that behalf expended: And whereas the said defendant, by an order of the said court, bearing date the day and year aforesaid, was ordered to pay the said debt* [*or damages*] *together with the said costs, amounting together to the sum of £* [state the times for payment]: *And whereas the said sum of £* [or *the sum of £ being part of the said sum of £* as the case may be,] *has not been paid to the said plaintiff, pursuant to the said order: These are therefore to require and order you forthwith to make and levy by distress and sale of the goods and chattels of the said defendant, wheresoever they may be found within the district of this Court (excepting the wearing apparel and bedding of the said defendant or his family, and the tools and implements of his trade, if any, to the value of five pounds), the said sum of £ and also the costs of this execution; and also to seize and take any money or bank-notes (whether of the Bank of England or of any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money, of the said defendant, which may be there found, or such part or so much thereof as may be sufficient for*

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the satisfying of this execution and the costs of making and executing the same.

Given under the seal of the Court, this day of 18 .

By the Court,

Clerk of the said Court.

[In cases of cross judgments the execution must be stated to be for the balance.]

To High Bailiff of the said Court, and other the Bailiffs thereof.

	£		
Debt			
Costs			
Execution			

NOTICE.

The goods and chattels are not to be sold until after the end of five days next following the day on which they may have been taken, unless they be of a perishable nature, or at the request of the said defendant.

And the following is the form of a

WARRANT OF EXECUTION BY A DEFENDANT FOR COSTS.

In the County Court of at

(Seal.)

Between { *A. B., Plaintiff, and C. D., Defendant.* }

Whereas at a County Court duly holden at within the jurisdiction of the said Court, on the day of before the judge of the said Court, the said plaintiff appeared [or *did not appear*] *to prosecute his plaint against the said defendant in an action of debt* [or *to recover damages*] *for* [set out the substance of the plaint]: *And whereas the said plaintiff, at the hearing of the said plaint, did not make proof of his debt* [or *demand*] *to the satisfaction of the said Court, and thereupon it was ordered and adjudged by the said Court that judgment should be entered for the said defendant, and that the said plaintiff should pay to the said defendant the sum of £ by way of costs and satisfaction for his trouble and*

attendance in that behalf, and the further sum of £ for his costs and charges by the said defendant about the said suit in that behalf expended, amounting together to the sum of £ on or before the day of : And whereas the said sum of £ has not been paid to the said defendant, pursuant to the said judgment and order: These are therefore to require and order you forthwith to make and levy by distress and sale of the goods and chattels of the said plaintiff, wheresoever they may be found within the district of this Court (excepting the wearing apparel and bedding of the said plaintiff or his family, and the tools and implements of his trade, if any, to the value of five pounds), the said sum of £ , and also the costs of this execution; and also to seize and take any money or bank-notes (whether of the Bank of England or of any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money, of the said plaintiff, which may there be found, or such part or so much thereof as may be sufficient for the satisfying of this execution, and the costs of making and executing the same.

Given under the seal of the Court, this day of 18 .

By the Court,

Clerk of the said Court.

To High Bailiff of the said Court, and other the Bailiffs thereof.

Costs	£			
Execution				

NOTICE.

The goods and chattels are not to be sold until after the end of five days next following the day on which they may have been taken, unless they be of a perishable nature, or at the request of the said defendant.

493. *When executed.*—The time for executing a warrant is limited by rule 37, thus:—

Rule 37. No warrant of execution or commitment shall be executed after the expiration of two calendar months from the date thereof.

Rule 37. When executed.

494. *Shall not be superseded.*—Section 108 provides that no judgment or execution shall be superseded by writ of error.

Section 108. No execution shall be stayed by writ of error.

Sect. 108. And be it enacted, that no judgment or execution shall be stayed, delayed, or reversed upon or by any writ of error, or *supersedeas* thereon, to be sued for the reversing of any judgment given in any Court holden under the provisions of this Act.

495. *How superseded.*—But section 109 provides that it shall be superseded on payment of debt and costs, thus:

Section 109. Execution to be superseded on payment of debt and costs.

Sect. 109. And be it enacted, that in or upon every warrant of execution issued against the goods and chattels of any person whomsoever the Clerk of the Court shall cause to be inserted or endorsed the sum of money and costs adjudged, with the sum allowed by this Act as increased costs for the execution of such warrant; and if the party against whom such execution shall be issued shall, before an actual sale of the goods and chattels pay or cause to be paid or tendered unto the Clerk of the Court out of which such warrant of execution has issued, or to the Bailiff holding the warrant of execution, such sum of money and costs as aforesaid, or such part thereof as the person entitled thereto shall agree to accept in full of his debt or damages and costs together with the fees herein directed to be paid, the execution shall be superseded, and the goods and chattels of the said party shall be discharged and set at liberty.

How executed.

496. *How executed.*—The Bailiff may enter the house of the defendant when the outer door is open, or through any other opening, to execute the *fi. fa.*, and this though neither the defendant nor his goods are there, if he had reasonable grounds for suspecting that there were goods there belonging to the defendant: (*Semayne's case*, 5 Co. R. 92.) And he may enter the house of a stranger if goods belonging to the defendant are actually there, otherwise not: (*Semayne's case; Morrish* v. *Murray*, 13 M. & W. 52.)

The Bailiff cannot break open any outer door or window of the party's dwelling-house in order to

execute the warrant: (*Semayne's case*, 5 Co. R. 91.) But having entered peaceably he may, in all cases, break open inner doors, closets, and the like, if necessary: (*R.* v. *Bird*, 2 Show. 87.)

The Bailiff may, if necessary, break open the outer door of a barn or other building not connected with, or within the same curtilage with the dwelling-house, and that even without a previous demand and refusal of admission: (*Penton* v. *Browne*, 1 Sid. 181.) The Bailiff may also, after demand of admittance and refusal, break open the outer door of a dwelling-house belonging to a third person, if the defendant's goods have been taken there to avoid being taken in execution.

After having seized the goods, the Bailiff may either remove the goods to some fit place, or he may leave them on the premises, and leave a man in possession of them: (*Ackland* v. *Paynter*, 8 Price, 95; *Doker* v. *Hasler*, 2 Bing. 479.)

497. *What Goods may be taken.*—All goods and chattels belonging to a party, except wearing apparel, &c., to the amount of 5*l.*, may be taken. Sections 96 and 97 provide for this.

Section 96. What goods may be taken in execution.

Sect. 96. And be it enacted, that every Bailiff or officer executing any process of execution issuing out of the said County Court against the goods and chattels of any person, may by virtue thereof seize and take any of the goods and chattels of such person (excepting the wearing apparel and bedding of such person or his family, and the tools and implements of his trade to the value of five pounds, which shall to that extent be protected from such seizure), and may also seize and take any money or bank notes (whether of the Bank of England or of any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money, belonging to any such person against whom any such execution shall have issued as aforesaid.

Section 97. Securities seized to be held by High Bailiff.

Sect. 97. And be it enacted, that the High Bailiff shall hold any cheques, bills of exchange, promissory notes, bonds, specialties, or other securities for money which shall have been so seized or taken as aforesaid, as a security or securities for the amount directed to be levied by such execution, or so much

thereof as shall not have been otherwise levied or raised for the benefit of the plaintiff; and the plaintiff may sue in the name of the defendant, or in the name of any person in whose name the defendant might have sued, for the recovery of the sum or sums secured or made payable thereby, when the time of payment thereof shall have arrived.

But though the above section authorizes the plaintiff to sue on any securities belonging to the defendant that the Bailiff may seize, it does not entitle him to seize money in the hands of a third party in trust for the debtor: (*France* v. *Campbell*, 9 Dowl. 914.) And if the Bailiff has a balance in his hands arising from a former execution against the same party, he cannot appropriate such balance for the purposes of the second warrant, but he must pay it over to the defendant: (*Harrison* v. *Paynter*, 6 M. & W. 387.) So if, whilst the Bailiff has money in his hands, the proceeds of an execution at the suit of A., a *fi. fa.* is lodged with him against A., he cannot seize such money under the second warrant, unless it be the identical money received for the goods and set aside, and marked as the property of A.: (*Wood* v. *Wood*, 4 Q. B. 397.)

The 96th section only authorizes the Bailiff to take "the goods and chattels" of the debtor, and there does not seem to be any means provided by the Act for satisfying the judgments of the Court out of the lands of the defendant. If, therefore, a party has real property, but has no goods or chattels, the only means of enforcing the orders of the Court will be by summoning the debtor under the 99th section.

"Goods and chattels," what.

The term "goods and chattels" includes all kinds of personal property, and, as it seems, includes tenant's fixtures, trade fixtures and chattels real. The same words in an ordinary writ of *fi. fa.* (and the warrant of execution is only that writ modified so as to apply to the County Courts; see sect. 94) extend to all tenant's fixtures, which the party himself may remove (*Poole's case*, 1 Salk. 368); to trade fixtures (*Doe* v. *Donston*, 1 B. & A. 230); to leases or terms for years (*Playfair* v. *Musgrove*, 14 M. & W. 239); and also to growing crops upon land in the occupation of a tenant for a term of years: (*Tomkins* v. *Russell*, 9 Price, 287; *Hodgson* v. *Gascoigne*, 5 B. & A. 88.)

Fixtures.

If the party against whose goods execution issues be the owner of the freehold, no fixtures that are actually attached to the land or buildings can be taken under a *fi. fa.*, as, in such case, they are parcel of the freehold, and not goods or chattels: (*Wynne* v. *Ingleby*, 5 B. & A. 625.) And none but trade fixtures, or such as go to the executor, can be taken.

Whose goods may be taken.

498. *Whose Goods may be taken.*—The Bailiff can execute the writ on goods of the defendant only, and if he seize goods or chattels belonging to a third party, he will be liable to an action; and this, though they be in the possession of the defendant and apparently his property: (Chitty's Arch. P. 581.) If a third party puts in a claim for the goods, the Bailiff's proper course is to apply for a summons of interpleader, under the 118th section; but where no such claim is made, but it nevertheless appears doubtful whether or not the goods are the defendant's, it is not so clear what course the Bailiff ought to pursue. The Sheriff may in such a case empannel a Jury to try the question, but it is apprehended that the High Bailiff of a County Court has no such power.

Goods of husband and wife.

499. *Goods of Husband and Wife.*—Property vested in trustees for the separate use of a married woman cannot be taken in execution under a *fi. fa.* against the husband, and that, although the husband take an equitable interest for life under the settlement, and be in actual possession of the property at the time of the execution: (*Izod* v. *Lamb*, 1 C. & J. 35; *Tugman* v. *Hopkins*, 5 Scott N. R. 464.) But a term vested in the husband in right of his wife may be seized: (*Faer* v. *Newman*, 4 T. R. 638.) So also goods bought by the wife with the interest of money settled to her separate use, or her accumulated savings out of such money: (*Carne* v. *Brice*, 7 M. & W. 183; *Molony* v. *Kennedy*, 10 Sim. 254.) The goods of a woman cohabiting with the defendant cannot be taken in execution although she passes as his wife: (*Edwards* v. *Bridges*, 2 Stark. R. 396; *Glasspoole* v. *Young*, 9 B. & C. 696.)

Goods of a testator or intestate.

500. *Goods of a Testator or Intestate.*—The goods of a testator or intestate cannot be taken in execution for a personal debt of the executor or administrator,

unless the executor or administrator has by some acts made the goods his own: (1 Wms. Exrs. 498, 505.)

Goods of partners.

501. *Goods of Partners.*—Under a warrant against one of two partners, the Bailiff may take the goods of both and sell the undivided moiety in them, but the seizure cannot in any way affect the property or the possession of the other party: (*Johnson* v. *Evans*, 1 Dowl. & L. S. C. 935.) The Bailiff can only sell what interest the defendant has in the goods, and the lawyer must find out what that interest is in the best way he can: (*Holmes* v. *Mentz*, 4 A. & E. 131.)

Goods of bankrupts.

502. *Goods of Bankrupts.*—Under the old law the sale of goods of a bankrupt was held valid, when a *bonâ fide* seizure was made and the sale took place before the date or issuing of the fiat, although there had been an act of bankruptcy: (*Whitmore* v. *Green*, 2 D. & L. 174.) But if the goods were seized after notice of an act of bankruptcy, the execution was void against the assignees. And by 12 & 13 Vict. c. 106, s. 133, it is enacted that "all executions and attachments against the lands and tenements of any bankrupt *bonâ fide* executed by seizure, and all executions and attachments against the goods and chattels of any bankrupt *bonâ fide* executed and levied by seizure and sale before the date of the fiat or filing of such petition, shall be deemed to be valid, notwithstanding any prior act of bankruptcy by such bankrupt committed, provided the person so dealing with or paying to or being paid by such bankrupt or at whose suit or on whose account such execution or attachment shall have issued, had not at the time of such payment, conveyance, contract, dealing, or transaction, or at the time of so executing or levying such execution or attachment, or at the time of making any sale thereunder, notice of any prior act of bankruptcy by him committed: provided also, that nothing herein contained shall be deemed or taken to give validity to any payment or to any delivery or transfer of any goods or chattels made by any bankrupt, being a fraudulent preference of any creditor of such bankrupt, or to any conveyance or equitable mortgage made or given by any bankrupt by way of fraudulent preference of any creditor of such bankrupt, or to any execution founded on a judgment on a warrant of

attorney or *cognovit actionem* or Judge's order obtained by consent given by any bankrupt by way of fraudulent preference." But all seizures or sales made after notice of an act of bankruptcy or the filing of the petition by such bankruptcy are void.

503. *Goods of Insolvents.*—A writ of *fi. fa.* cannot be executed against the goods of a party whose estate and effects have been vested in assignees under 1 & 2 Vict. c. 110, or 5 & 6 Vict. c. 116, or 7 & 8 Vict. c. 96, unless the writ has been lodged with the officer before the issuing of the vesting order: (*Woodland* v. *Fuller*, 11 A. & E. 859.) And after an insolvent has been adjudged to be discharged, no *fi. fa.* for any debt from which he has been discharged can be executed against any property he may have.

Goods of insolvents.

504. *Goods of Surviving Defendants.*—If one of several defendants die after judgment and before execution, the warrant should in form be against all, but it can be executed only against the goods of the survivors: (2 Saund. 50, a. 72, n. o.)

Goods of surviving defendants.

505. *Goods of Ambassadors.*—By 7 Anne, c. 12, s. 3, the goods of foreign ambassadors and other ministers, and also the goods of their domestics, are privileged from being taken in execution.

Goods of ambassadors.

506. *Goods of Clergymen.*—The goods ecclesiastical of clergymen cannot be seized by the Bailiff: (2 Inst. 472.)

Goods of clergymen.

507. *Goods distrained.*—Goods distrained cannot be taken in execution as they are in the custody of the law: (Comyn's Digest, "Execution," C. 3.)

Goods distrained.

508. *Goods let or pawned.*—Goods in the possession of the defendant, in which he has a special property as a pawnee or the like, may be taken but not sold: (*Dean* v. *Whittaker*, 1 C. & P. 347.) So goods of the defendant let or pledged to another may be sold, subject to the right and possession of the pawnee: (*Scott* v. *Scholey*, 8 East, 476.) But goods held by the defendant in right of a lien cannot be taken in execution against him: (*Legge* v. *Evans*, 6 M. & W. 36.)

Goods let or pawned.

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Goods fraudulently assigned.

509. *Goods fraudulently assigned.*—The Bailiff may in general take goods belonging to the defendant that have been fraudulently assigned to a third person, and if the defendant sell his goods even for valuable consideration after the warrant has been delivered to the Bailiff to execute, such a sale will, as against the execution creditor, be held void unless made in market overt: (B. N. P. 91; *Samuel* v. *Duke*, 6 Dowl. 536.) So a fraudulent assignment before the delivery of the warrant is void as against creditors. The absence of any valuable consideration is a mark of fraud. So continuance in possession by a vendor after the execution of a bill of sale is a badge and evidence of fraud, unless the possession be consistent with the deed: (*Twyne's case*, 1 Smith's Leading Cases, 1.) But if the possession be consistent with the terms of the assignment, as if, for instance, it be by way of mortgage, the assignment will be held valid, and the property cannot be taken in execution without first paying off the mortgage debt: (*Martindale* v. *Booth*, 3 B. & Ad. 498; *Eastwood* v. *Brown*, R. & M. 312.)

Rescue.

510. *Rescue.*—If any party assault any officer in the execution of his duty, or rescue any goods taken in execution, he will be liable to punishment as provided in the 114th section.

Section 114. — Penalty for assaulting Bailiffs, or rescuing goods taken in execution.

Sect. 114. And be it enacted, that if any officer or Bailiff of any Court holden under this Act shall be assaulted while in the execution of his duty, or if any rescue shall be made or attempted to be made of any goods levied under process of the Court, the person so offending shall be liable to a fine not exceeding five pounds, to be recovered by order of the Court, or before a Justice of the Peace as herein-after provided: and it shall be lawful for the Bailiff of the Court or any peace officer in any such case to take the offender into custody (with or without warrant), and bring him before such Court or Justice accordingly.

Disposal of Goods taken in Execution.

511. *Cheques, &c.*—The High Bailiff shall hold any cheques, &c., that shall have been taken and the plaintiff may sue for the same in the name of the defendant.

Section 97. — Securities

Sect. 97. And be it enacted, that the High Bailiff shall hold any cheques, bills of exchange, promissory notes, bonds,

specialties, or other securities for money which shall have been so seized or taken as aforesaid, as a security or securities for the amount directed to be levied by such execution, or so much thereof as shall not have been otherwise levied or raised for the benefit of the plaintiff; and the plaintiff may sue in the name of the defendant, or in the name of any person in whose name the defendant might have sued, for the recovery of the sum or sums secured or made payable thereby, when the time of payment thereof shall have arrived.

seized to be held by High Bailiff.

512. *Sale of Goods taken in Execution.*—**Goods taken cannot be sold until after the end of five days next after the seizure, unless they be of a perishable nature, or upon the request in writing of the party whose goods shall have been taken.**

Section 106.

Regulating the sale of goods taken in execution.

Sect. 106. And be it enacted, that no sale of any goods which shall be taken in execution as aforesaid shall be until after the end of five days at least next following the day on which such goods shall have been so taken, unless such goods be of a perishable nature, or upon the request in writing of the party whose goods shall have been taken; and until such sale the goods shall be deposited by the Bailiff in some fit place, or they may remain in the custody of a fit person approved by the High Bailiff, to be put in possession by the Bailiff; and it shall be lawful for the High Bailiff, from time to time as he shall think proper, to appoint such and so many persons for keeping possession, and so many sworn brokers and appraisers for the purpose of selling or valuing any goods, chattels, or effects taken in execution under this Act, as shall appear to him to be necessary, and to direct security to be taken from each of them, for such sum and in such manner as he shall think fit, for the faithful performance of their duties without injury or oppression; and the Judge or High Bailiff may dismiss any person, broker, or appraiser so appointed: and no goods taken in execution under this Act shall be sold for the purpose of satisfying the warrant of execution except by one of the brokers or appraisers so appointed; and the brokers or appraisers so appointed shall be entitled to have, out of the produce of the goods so distrained or sold, sixpence in the pound on the value of the goods for the appraisement thereof, whether by one broker or more, over and above the stamp duty, and for advertisements, catalogues, sale and commission, and

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delivery of goods one shilling in the pound on the net produce of the sale.

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Care should be taken not to sell more than is sufficient to satisfy the execution; and the Bailiff, if he sells more than is necessary, will be liable in trover for the excess, as a sale under an execution is presumed to be for ready money: (*Stead* v. *Gascoigne*, 8 Taunt. 527; *Batchelor* v. *Vise*, M. & S. 552.) It is the duty of the Bailiff to stop the sale as soon as sufficient money is realized to satisfy the execution: (*Cook* v. *Palmer*, 6 B & C. 789.)

What rent may be deducted.

513. *What Rent may be deducted.*—The 107th section enacts that the provisions of 8 Anne, c. 17, shall not apply to goods taken by virtue of any execution issuing out of the County Courts, but the landlord may, by any writing under his hand, or under the hand of his agent, to be delivered to the Bailiff or officer making the levy, which writing shall state the terms of holding and the rent payable for the same, claim any rent in arrear then due to him,

1. When the letting is by the week, rent for four weeks.
2. When the letting is for half a year or less, rent due in two terms of payment.
3. When the letting is by the year, one year's rent.

The section is as follows:—

Section 107.

As to the liability of goods taken in execution under 8 Anne, c. 17.

Sect. 107. And be it enacted, that so much of an Act passed in the eighth year of the reign of Queen Anne, intituled "An Act for the better Security of Rents, and to prevent Frauds committed by Tenants," as relates to the liability of goods taken by virtue of any execution, shall not be deemed to apply to goods taken in execution under the process of any Court holden under this Act;

Landlord may claim certain rents in arrear.

but the landlord of any tenement in which any such goods shall be so taken shall be entitled, by any writing under his hand or under the hand of his agent, to be delivered to the Bailiff or officer making the levy, which writing shall state the terms of holding, and the rent payable for the same, to claim any rent in arrear then due to him, not exceeding the rent of four weeks where the tenement is let by the week, and not exceeding the rent accruing due in two terms of payment, where the tenement

is let for any other term less than a year, and not exceeding in any case the rent accruing due in one year; and in case of any such claim being so made the Bailiff or officer making the levy shall distrain as well for the amount of the rent so claimed, and the costs of such additional distress, as for the amount of money and costs for which the warrant of execution issued under this Act, and shall not proceed to sell the same or any part thereof within five days next after such distress taken; and if any replevin be made of the goods so taken, such of the goods shall be sold under the execution as shall satisfy the money and costs for which the warrant of execution issued, and the costs of the sale; and the overplus of such sale (if any), and also the residue of the goods, shall be returned as in other cases of distress for rent, and replevin thereof; and for every such additional distress for rent in arrear the High Bailiff of the Court shall be entitled to have as the costs of the distress, instead of the fees allowed by this Act for making such distress, and keeping possession thereof, the fees allowed by an Act passed in the fifty-seventh year of the reign of King George the Third, intituled "An Act to regulate the Cost of Distresses levied for Payment of Small Rents."

Bailiffs making levies may distrain for rent and costs.

In case of replevin.

To remedy this and other inconveniences, 13 & 14 Vict. c. 61, s. 20, enacts :

13 & 14 Vict. c. 61, s. 20

Sect. 20. And whereas by the said Act passed in the tenth year of Her present Majesty, intituled "An Act for the more easy Recovery of Small Debts and Demands in England," it is enacted, that in cases of rent being in arrear in respect of premises wherein goods may have been taken in execution under and by virtue of the said Act it should be lawful for the landlord, by writing to be delivered to the Bailiff or officer making the levy, which writing should state the terms of holding and rent payable for the same, to claim any rent in arrear as therein mentioned: and whereas so much of the said enactment as requires that the claim of rent to be made by writing stating the terms of holding may lead to technical objections and unnecessary prolixity: and whereas also it is expedient to obviate certain difficulties which have arisen as to the landlord's right

So much of 9 & 10 Vict. c. 95, as requires a landlord, where rent is in arrear for premises wherein goods have been taken in execution, to state in writing the terms of holding, &c. repealed.

To entitle landlord to

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benefit under recited act, it shall be sufficient to state the amount of rent claimed, &c.

to priority of payment upon the construction of the said enactment· be it therefore enacted, that so much of the said act as requires that the said writing and claim should state the terms of holding shall be and is hereby repealed, and that it shall be a sufficient notice of claim to entitle the landlord to all the benefit given to landlords under the said Act, that such writing and claim shall state the amount of the rent claimed to be in arrear and unpaid, and the time for and in respect of which such rent is claimed to be due, in like manner as is now required by law in cases of ordinary distress for rent, and no further or otherwise; and also that no execution creditor under the said Act or this Act shall be satisfied his debt out of the proceeds of such execution and distress, or execution only where the tenant shall replevy, until the landlord who shall conform to the provisions of the said Act as amended by this Act shall have been paid the rent in arrear for the periods in the said Act limited.

21. Enactments of recited act as altered by this act, as to certain claims of landlords, to extend to goods taken in execution

Sect. 21. And be it enacted, that the enactments contained in the said Act, as altered and amended in this Act, relating to the claims of landlords for rent in arrear where goods on the premises demised have been taken in execution, shall apply and extend to goods taken in execution under the authority of this Act, in as full and beneficial a manner as if the same enactments were re-enacted in the like terms in this Act.

The landlord's claim for rent may now be in the following form:—

Form of landlord's claim for rent.

To the High Bailiff of the County Court of
at , *or to* , *officer of the High Bailiff of the County Court at* .

Whereas I have been informed that you have distrained the goods of C. D. of , *on his premises at* , *to satisfy a certain judgment given at the said Court against the said C. D., at the suit of one A. B. I hereby give you notice that I am the landlord of the said C. D., and that the said C. D. holds the said premises at* *of me as tenant. And I claim £* *for rent now in arrear, and I require you to*

pay the same to me before you apply the proceeds of the sale of the said goods, or any part thereof, to satisfy the said judgment.

Dated this *A. D.* 18 .

E. F.,

Landlord of the said tenement.

The term "landlord," as used in the County Courts Act, shall be understood to mean the person entitled to the immediate reversion of the lands, or, if the property be in joint tenancy, coparcenary, or tenancy in common, shall be understood to mean any one of the persons entitled to such reversion: (sect. 142.) Meaning of the term "landlord."

The wording of the 107th section is somewhat ambiguous as to the priority of the landlord's claim over that of the execution creditor, and there have been conflicting decisions as to its construction in the County Courts.

As to the expenses of the levy and distress, see *post*, chapter on Costs.

In cases of disputed claims, the Clerk may apply to the Court, as to which proceeding see *post*, "Interpleader."

514. *Warrant returned, and Money paid into Court.*—The High Bailiff shall, when required by the Judge, make a return of all process that he shall have been required to execute. And he shall pay over to the Clerk of the Court all moneys received by him within three days after such receipt. Warrant returned and money paid into Court.

Rule 45. At every Court, or at such other times as the Judge shall require, the High Bailiff shall deliver a statement or return, pursuant to the form in the schedule, of what shall have been done since his last return under every process of execution or commitment, which he shall have been required to execute. *Rule* 45. Return made by High Bailiffs.

Rule 48. Every Bailiff levying or receiving any money by virtue of any process issuing out of the Court of which he is *Rule* 48. Bailiff must

BOOK VI. THE PRACTICE. Bailiff, shall, within three days after the receipt thereof, pay over the same to the Clerk of such Court.

Cap. 7. Execution.

FORM OF RETURN MADE BY HIGH BAILIFF.

pay over money within three days.

(See *ante*, page 123.)

Return made to another Court.

If the Clerk receive notice of motion to set aside the execution or order he is required to retain the money paid into Court.

Rule 22.

On notice of motion to set aside execution, the Clerk shall retain the money.

Rule 22. Where any money is paid into Court under any execution or order of the Court, if the Clerk receive notice from any party of his intention to apply to the Court to set aside the execution or order under which such money is paid into Court, the Clerk shall retain the same, until after such application has been determined, or until the Judge shall otherwise order.

Execution out of the district.

515. *Execution out of the District.*—If the defendant or his goods are within the jurisdiction of another Court, the High Bailiff of the Court from which the execution issues may send the warrant to the Clerk of such other Court, who is to seal the same and deliver it to the High Bailiff for execution.

Section 104.

How execution may be had out of the jurisdiction of the Court.

Sect. 104. And be it enacted, that in all cases where a warrant of execution shall have issued against the goods and chattels of any party, or an order for his commitment shall have been made under this Act, and such party, or his goods and chattels, shall be out of the jurisdiction of the Court, it shall be lawful for the High Bailiff of the Court to send such warrant of execution or of commitment to the Clerk of any other Court constituted under this Act, within the jurisdiction of which such party, or his goods and chattels, shall then be or believed to be, with a warrant thereto annexed, under the hand of the High Bailiff and seal of the Court from which the original warrant issued, requiring execution of the same, and the Clerk of the Court to which the same shall be sent shall seal or stamp the

same with the seal of his Court, and issue the same to the High Bailiff of his Court, and thereupon such last-mentioned High Bailiff shall be authorized and required to act in all respects as if the original warrant of execution or commitment had been directed to him by the Court of which he is the High Bailiff, and shall, within such time as shall be specified in the rules of practice, return to the High Bailiff of the Court from which the same originally issued, what he shall have done in the execution of such process, and in case a levy shall have been made shall, within such time as shall be specified in the rules of practice, pay over all moneys received in pursuance of the warrant to the High Bailiff of the Court from which the same shall have originally issued, retaining the fees for execution of the process; and where any order of commitment shall have been made, and the person apprehended, he shall be forthwith conveyed, in custody of the Bailiff or officer apprehending him, to the gaol or house of correction or other prison of the Court within the jurisdiction of which he shall have been apprehended, and kept therein for the time mentioned in the warrant of commitment, unless sooner discharged under the provisions of this Act; and all constables and other peace officers shall be aiding and assisting within their respective districts in the execution of such warrant.

516. *Return and Payment of the Money.*—The return to a warrant issuing out of a foreign district must be made forthwith; and the money paid within three days.

Rule 47. Every High Bailiff required to execute any warrant of execution or commitment issuing out of any other Court, shall make a return to such last-mentioned Court forthwith on the execution thereof; and if he shall not have executed such warrant, he shall return the same at the expiration of two calendar months from the date thereof.

Rule 47. High Bailiff's return.

Rule 49. If any High Bailiff shall have levied or received any money under any process issuing out of any other Court, he shall, within three days from the receipt thereof, pay over such money, retaining the fees for execution thereof, to the High Bailiff of such last-mentioned Court.

Rule 49. Payment of money.

Book VI. THE PRACTICE.

Cap. 7. *Execution.*

The following are convenient forms of Returns by Bailiffs.

RETURN WHEN THE AMOUNT HAS BEEN LEVIED.

Form of return when the amount has been levied.

In the County Court of at

To the High Bailiff of the County Court of at

By virtue of the warrant herein to me directed and delivered, I have caused to be made of the goods and chattels of the within named C. D., the sum of £ being £ the amount of debt and costs as stated in the said warrant, and £ the amount of fees for execution thereof.

Dated this, &c. *E. F.*
High Bailiff of the County Court of at

RETURN OF NULLA BONA.

Return of *nulla bona.*

To the High Bailiff of the County Court of at

In the County Court of at

Between { *A. B., Plaintiff, and C D., Defendant*

The said C. D. hath no goods or chattels in my district whereof I can cause to be made the sum of £ , debt and costs, or any part thereof, as required by a warrant herein directed to me.

E. F.
High Bailiff of the County Court of at

RETURN WHERE PAYMENTS HAVE BEEN MADE BY THE HIGH BAILIFF.

Return when payments have been made by the High Bailiff.

To the High Bailiff of the County Court of at

In the County Court of at

Between { *A. B., Plaintiff, and C. D., Defendant.*

By virtue of the warrant of execution herein, to me directed

and delivered, I have caused to be made of the goods and chattels of the said C. D. the sum of £ , part whereof I have paid to the Clerk of the Court of at in this district, which I was commanded to levy of the said C. D.'s goods and chattels, within my district, by a warrant of execution delivered to me before the delivery of the said warrant at the suit of A. B., and a further part I have paid to G. H., landlord of the said C. D., for two quarters' rent in respect of the premises where the levy was made; and a further part thereof I have retained as fees for execution. The residue of the said sum so levied after the aforesaid deductions and payments amount to the sum of £ , which I send to you in satisfaction of the debt and costs which I have by the said first-mentioned warrant been directed to levy.

E. F.
High Bailiff of the County Court of at

517. *Liability of the High Bailiff.*—In the case of *Smith* v. *Pritchard and others* (2 C. C. Chron. 317), in the Common Pleas, the following points, as to the liability of the High Bailiff of a County Court, were determined.

1st. That the High Bailiff of County Court A., who sends a warrant, duly issued to him to be executed, to County Court B., for execution, the party named in the warrant being supposed to be within the jurisdiction of B., is not liable for the misconduct of his Under Bailiff while assisting the Under Bailiff of County Court B., in the execution of the warrant.

2nd. Where the Under Bailiff of a County Court, while executing a warrant, illegally breaks and enters a factory, and is assaulted by the owner in resisting the illegal entry, and afterwards the Under Bailiff takes the owner into custody for the assault under sect. 114 of 9 & 10 Vict. c. 95, it was held, in an action by the owner for the breaking and entering, and false imprisonment, that the High Bailiff though liable for the wrongful breaking and entering, was not liable for the false imprisonment. We shall insert the case here at some length.

Trespass.—The first count of the declaration was for break-

ing and entering the plaintiff's factory; the second for assault and false imprisonment.

Pleas.—1. Not guilty. 2. Not the plaintiff's factory.

At the trial, in Middlesex, before WILLIAMS, J., it appeared that the defendants were Wm. Pritchard, the High Bailiff of Southwark County Court, and Beaver, his Under Bailiff, and Wm. Tarn Pritchard, the High Bailiff of the Lambeth County Court, and Jones, his Under Bailiff. Thos. Smith, the younger, the son of the plaintiff, was sued in the Lambeth County Court, and a warrant was issued, directed to the High Bailiff of the Lambeth County Court, to arrest him. This warrant was sent for execution to the Clerk of the Southwark County Court, who issued it to the High Bailiff of the Southwark County Court under 9 & 10 Vict. c. 95, s. 104. The two Under Bailiffs went to the plaintiff's factory to execute the warrant, and, believing Smith, jun., to be there, broke in, and were resisted by the plaintiff, and in the course of that resistance the plaintiff made, as was admitted, an assault upon one of the Under Bailiffs. Not succeeding in taking Smith, the younger, the Under Bailiffs left, and subsequently returned and took the plaintiff into custody for the assault on the Under Bailiff, while in the execution of his duty, under sect. 114. The verdict was taken for 10*l.* damages on the first count, and for 60*l.* damages on the second count, against the two Under Bailiffs, and for the defendants as against the High Bailiffs.

Byles, Serjt., pursuant to leave reserved, moved to enter the verdict for 70*l.* against the two Under Bailiffs and the two High Bailiffs or against the two Under Bailiffs of the High Bailiff of the Southwark County Court.

WILDE, C. J. left the Court before the close of the argument.

MAULE, J.—The Lord Chief Justice was of the same opinion, so far as he had heard the argument, as we have come to. The liability of the High Bailiff is not so extensive as contended for by the plaintiff. The High Bailiff is placed, in relation to his Under Bailiffs, by sect. 33, in the same responsibility as the sheriff is by the ordinary law in relation to the Bailiff who executes his warrant. It is admitted that unless the High Bailiff is liable by this section, he is not liable at all. Now the liability of the Sheriff, in case of the misconduct of his officer, is confined to cases of the officer's misdoing something that he

was compelled to do. If the officer misdoes something he is ordered to do, it is no answer for the Sheriff to say, so far from ordering the officer to do the thing complained of, I enjoined him not to do it, but to do something else; still the Sheriff is liable. Inasmuch, therefore, as sect. 114, for reasons which must be taken to be without any doubt, is optional, and not mandatory upon the Under Bailiff, the act for which it sought to make the High Bailiff liable was an act which, at the highest it can be put, the Under Bailiff thought he might do, not an act which he was called upon to do. The section is only a power given by the statute incident to the office. In either of those views it would be extending the case beyond principle and authority to make the High Bailiff liable. The reason why the Sheriff is liable for the misconduct of his Bailiff is because the law calls upon him to do the act, and instead of doing it himself he appoints some one else to do it. I think, therefore, that the verdict can only be against all three for 10*l.* on the first count.

WILLIAMS, J.—I am of the same opinion. The case was very pointedly and justly put by Mr. Hannen, when he said, "suppose the Under Bailiff had been asked what his authority was for taking a person offending into custody, the reply could only be the Act of Parliament." The warrant is only evidence of the authority of the High Bailiff to the Under Bailiff, to whom, while acting under its authority, that must occur which would justify him in giving a person into custody under the Act of Parliament.

TALFOURD, J. concurred.

Rule absolute, without costs, to enter verdict for plaintiff on first count, with 10*l.* *damages against the three.*

But by sect. 19 of the new statute, 13 & 14 Vict. c. 61, protection is given to High Bailiffs acting under warrant or order of the Court. (This section is given *ante*, pp. 114, 143.)

CAP. VIII.

INTERPLEADER.

BOOK VI. THE PRACTICE. — *Cap.* 8. *Interpleader.*

In order to protect the High Bailiff and to facilitate the execution of the process of the Court, section 118 provides that if any claim shall be made to or in respect of any goods taken or the value thereof, the Clerk may, upon the application of the officer charged with the execution of the warrant, summon the claimants before the Judge in order that the right might be determined, whereupon all actions in respect of the claim shall be stayed.

Section 118.

Claims as to goods taken in execution to be adjudicated in Court.

Sect. 118. And be it enacted, that if any claim shall be made to or in respect of any goods or chattels taken in execution under the process of any Court holden under this Act, or in respect of the proceeds or value thereof, by any landlord for rent, or by any person not being the party against whom such process has issued, it shall be lawful for the Clerk of the Court, upon application of the officer charged with the execution of such process, as well before as after any action brought against such officer, to issue a summons calling before the said Court as well the party issuing such process as the party making such claim, and thereupon any action which shall have been brought in any of Her Majesty's Superior Courts of Record, or in any local or Inferior Court, in respect of such claim, shall be stayed, and the Court in which such action shall have been brought, or any Judge thereof, on proof of the issue of such summons, and that the goods and chattels were so taken in execution, may order the party bringing such action to pay the costs of all proceedings had upon such action after the issue of such summons out of the County Court; and the Judge of the County Court shall adjudicate upon such claim, and make such order between the parties in

respect thereof, and of the costs of the proceedings, as to him shall seem fit, and such order shall be enforced in like manner as any order made in any suit brought in such Court.

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It will be observed that the claim must be made by a third party, and a claim by the defendant himself, for instance, as trustee or executor, is not sufficient to entitle the Bailiff to apply under this section. It would also appear that no application can be made unless the goods have been actually seized, the words being "any goods or chattels taken." The provisions of this section do not apply to conflicting executions, as the High Bailiff should pay the first execution creditor: (see *Bragg* v. *Hopkins*, 2 Dowl. 151.)

The following is the form of

SUMMONS TO THE PLAINTIFF.

No.

In the County Court of *at*

(Seal.)

Between { *A. B., Plaintiff,* *and* *C. D., Defendant.* }

Summons to the plaintiff.

Whereas *of* *hath made a claim to certain goods and chattels* [or *money, &c.,* or *for certain rent due, &c.*], *which have been seized and taken in execution under and by virtue of process issuing out of this Court, in this action; you are therefore hereby summoned and required to be and appear before the Judge of the said Court, at* *on* *at the hour of* *in the forenoon, when the said claim will be adjudicated upon, and such order made thereupon as to the Judge shall seem fit.*

Given under the seal of the Court, this *day of* 18 .

Clerk of the said Court.

To *the above-named plaintiff.*

Note.—The claimant is called upon to give the particulars of his claim, which you may inspect on application at the office of the Clerk of the Court four day before the day of hearing.

Book VI. The Practice. — Cap. 8. Interpleader.

SUMMONS TO THE CLAIMANT.

No.

In the County Court of *at*

(Seal.)

Between { *A. B., Plaintiff,* *and* *C. D., Defendant.* }

You are hereby summoned and required to appear at a Court to be holden on next, at, &c., at the hour, &c., touching a claim made by you to certain goods and chattels [or *moneys, &c.,* or *for certain rent due on*], *seized and taken in execution under process issued out of this Court, in this action; and in default of your then establishing such claim, the said goods and chattels will be sold* [or *the said moneys, &c., paid over*], *according to the exigency of the said process; and take notice, that you are hereby required, five days before the said day of to deliver to the officer in charge of the said process, or to leave at my office at a particular of the goods or chattels so claimed by you, and of the grounds of your claim* [or *of the amount of rent claimed, and for what period due*].

Given under the seal of the Court, this day of 18 .

Clerk of the said Court.

To *of*

518. *Service of Summons and Delivery of Particulars.*—The summons shall be served in such time and manner as a summons to appear to a plaint.

Rule 39. — Service of summons.

Rule 39. Where any claim shall be made to or in respect of any goods or chattels taken in execution under the process of any Court holden under the authority of the said Act, or in respect of the proceeds or value thereof, by any landlord for rent, or by any person not being the party against whom such process has issued, and summonses have been issued on the application of the officer charged with the execution of such process, such summonses shall be served in such time and manner as hereinbefore directed for a summons to appear to a plaint, and the claimant shall be deemed the plaintiff, and the execution creditor the defendant; and the claimant shall, five clear days before the day on which the summonses are re-

Delivery of particulars.

turnable, deliver to the said officer, or leave at the office of the Clerk of the Court, a particular of any goods or chattels alleged to be the property of the claimant, and the grounds of his claim, or in case of a claim for rent, of the amount thereof, and for what period the same is claimed to be due.

The Judge of the Cheltenham Court ruled, in the case of *Grummins* v. *Boodle* (1 C. C. Chron. 123), that the notice of particulars delivered under this section should show the grounds of claim, *i. e.*, the title of the claimant should be set out; and that the Court has no power to adjourn in order to amend the particulars. And where a notice by the assignees of the defendant's estate did not disclose the names of the claimants, nor had annexed to it an inventory of the goods claimed, the notice was held insufficient: (*Whiffen* v. *Munn*, 2 C. C. Chron. 237, *Bromley*; see also *Smith* v. *Blackburn*, 1 C. C. Chron. 154, *Westmoreland*.)

Form of particulars of claim

FORM OF PARTICULARS OF CLAIM.

To Clerk of the County Court of at or
to Bailiff of, &c.

I hereby give you notice, that I claim certain of the goods and chattels taken in execution in the house of C. D., at under and by virtue of a warrant of execution issued from the said Court, at the suit of A. B. against the said C. D.; and that the particulars of the goods and chattels so claimed by me are the following, viz., [Here set out a list and description of the articles.] *And I further give you notice, that the ground of my said claim is* [state the grounds.]*

Dated this, &c.

T. H.

Hearing and Judgment.

519. *Hearing and Judgment.*—"And the Judge of the County Court shall adjudicate upon such claim, and make such order between the parties in respect thereof, and of the costs of the proceedings, as to him shall seem fit, and such order shall be enforced in like manner as any order made in any suit brought in such Court:" (sect. 118.)

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* It is essential that the notice should set out the grounds of the claim, otherwise it is defective: (*Reg.* v. *Chilton*, 3 C. C. Chron. 141.)

Book VI. THE PRACTICE.

Cap. 8. *Interpleader.*

Form of order.

ORDER ON AN INTERPLEADER SUMMONS.

No.

In the County Court of *at*

(Seal.)

Between { *A. B., Plaintiff,* *and* *C. D., Defendant.* }

It is hereby ordered, touching the claim of E. F. to certain goods and chattels [or *moneys, &c.*] *seized and taken in execution in this action, which said E. F. has been duly summoned to support his claim at this Court, that the said goods and chattels* [or *moneys, &c., or part thereof, to wit,* specifying them] *are the property of the said E. F.* [or *of the said defendant,* as the case may be]; *and it is further ordered, that the costs of this proceeding, amounting to* *be paid by the said* *to the Clerk of the Court, at his office in* *for the use of the said* *on or before the* *day of*

Given under the seal of the Court, this *day of* 18

By the Court,

Clerk.

Office hours, from ten till four.

This order is final, and where the Judge of a County Court has decided under section 118 against a claim made to goods taken in execution, the claimant is barred from bringing an action of trespass for breaking and entering the house in order to take the goods, unless he can show some excess of violence by the officer who seized: (*Jessop* v. *Crawley and others,* 3 C. C. Chron. 142.)

CAP. IX.

ARBITRATION.

The Judge may, with the consent of both parties, order a reference.

Suits may be settled by arbitration.

Sect. 77. And be it enacted, that the Judge may in any case, with the consent of both parties to the suit, order the same, with or without other matters within the jurisdiction of the Court in dispute between such parties, to be referred to arbitration, to such person or persons, and in such manner, and on such terms as he shall think reasonable and just; and such reference shall not be revocable by either party, except by consent of the Judge; and the award of the arbitrator or arbitrators or umpire shall be entered as the judgment in the cause, and shall be as binding and effectual to all intents as if given by the Judge; provided that the Judge may, if he think fit, on application to him at the first Court held after the expiration of one week after the entry of such award, set aside any such award so given as aforesaid, or may, with the consent of both parties aforesaid, revoke the reference, or order another reference to be made in the manner aforesaid.

The power of the Judge to direct a reference only extends to matters within his jurisdiction, and, therefore, matters of account which form *one cause of action*, the amount of which exceeds 50*l.*, cannot be referred under the authority of the Judge. It does not signify that the total amount due and payable to either party be under 50*l.*, if the account to be examined and adjudicated upon exceeds that amount. The County Courts have jurisdiction only in cases where the whole debt claimed does not exceed 50*l.*, or where "if there is a large account between the parties, they agree to settle it and strike a balance, and there is a clear sum determined upon as due, and

Woodhams v. Newman. Beswick v. Capper.

that below 20*l.*" (now 50*l.*): (per CRESSWELL, J., in *Woodhams* v. *Newman*, 2 C. C. Ch. 147. See also *Beswick* v. *Capper*, 13 L. T. 258.)

An attorney may refer a cause without a special authority for that purpose from his client: (*Filmer* v. *Delmer*, 3 Taunt. 486; *Smith* v. *Troup*, 18 L. J. 209, C. P.) But if the attorney agree to refer a cause in an unusual manner, the client will not be bound by such agreement: (*Iveson* v. *Carrington*, 1 B. & C. 160.)

The order of reference may be in the following form:

Form of order of reference.

No.

In the County Court of *at*

(Seal.)

Between { *A. B., Plaintiff,* *and* *C. D., Defendant.* }

Upon reading the plaint in this action, and by and with the consent of the said plaintiff and the said defendant, I, E. F., Esquire, Judge of the said Court, do order that this suit (and all other matters within the jurisdiction of this Court, in difference between the said parties), be referred to the arbitration and award of G. H., of , gentleman, so that he make and publish his award herein, on or before the day of next; and I hereby, with the like consent, order that the death of either party in the meantime shall not be deemed a revocation of this submission or reference, but that the said G. H. may nevertheless proceed to make his award for or against the representative of such deceased party, as if such representative were a party to this reference. And I further order that the said award, when made, be entered as a judgment of the said Court in this cause. And I further order that in the meantime all proceedings be stayed.

E. F.

Given under the seal of the Court, this day of 18

Clerk.

REVOCATION OF SUBMISSION.

Revocation of submission.

The reference to arbitration cannot be revoked ex-

cept by consent of the Judge: (sect. 77.) But the death of either party operates as a revocation, unless the submission contains an express stipulation to the contrary: (*Toussaint* v. *Hartopp*, 7 Taunt. 571; *Cooper* v. *Johnson*, 2 B. & Al. 394; *Biddell* v. *Dowse*, 6 B. & C. 255.) So the marriage of a *femme sole* party to the submission before award made is a revocation: (*M'Cave* v. *O'Ferrall*, 8 Clarke & Finelly, 30.)

Proceedings upon the Reference.

Appointment.

The arbitrator must appoint the time when and the place where the parties and their witnesses are to attend before him, and due notice thereof must be given to both parties. If, after such notice, one of the parties fail to attend, the arbitrator may proceed *ex parte:* (*Wood* v. *Leake*, 12 Ves. 412.) It must, however, appear that such party has wilfully absented himself: (*Gladwin* v. *Chilcote*, 9 Dowl. 550.)

Compelling attendance of witnesses.

Section 85 enacts, "that either of the parties to the suit, or *any other proceeding* under this Act, may obtain, at the office of the Clerk of the Court, summonses to witnesses to be sued by one of the Bailiffs of the Court, with or without a clause requiring the production of books, deeds, papers, and writings in their possession or control, and in any such summons any number of names may be inserted."

This seems to be the only method of compelling the attendance of witnesses before an arbitrator appointed by a Judge of the County Court, as the provisions of 3 & 4 Will. 4, c. 42, s. 40, can scarcely be held applicable to such references. That Act was passed before the establishment of the New County Courts, and though the words "any of His Majesty's Courts of Record," are made use of, those words must be held to apply only to the Superior Courts, or, at all events, to such Courts of Record as were in existence at the time the Act was passed.

Swearing witnesses.

520. *Swearing Witnesses.*—Section 83 enacts, "that on the hearing or trial of any action, *or any other proceeding* under this Act, the parties thereto, their wives and all other persons may be examined, either on behalf of the plaintiff or defendant, upon oath or solemn affirmation, in those cases in which persons

are by law allowed to make affirmation instead of taking an oath, to be administered by the proper officer of the Court."

If the submission be so that "the witnesses be examined upon oath," affidavits cannot be read: (*Banks* v. *Banks*, 1 Gale, 46.)

The arbitrator may examine either or both parties to the suit; he should not, however, examine one party or his witnesses without notice to the other side: (*Re Hic*, 8 Taunt. 694.)

Enlarging the time.

521. *Enlarging the Time.*—If the submission gives the arbitrator power to enlarge the time of making his award, he may enlarge it as a matter of course, but if no such power be given by the submission, it seems that neither the arbitrator nor the Judge can enlarge the time, as the 3 & 4 Will. 4, c. 42, does not apply.

The award.

522. *The Award.*—No precise form of words is necessary to constitute an award; it is sufficient if the arbitrator expresses by it a decision upon the matter submitted to him: (Chitty's Arch. Prac. 1478.)

Execution of award by arbitrator.

523. *Execution of Award by Arbitrator.*—If a matter be referred to two arbitrators, it seems that they must sign the award in the presence of each other: (*Stalworth* v. *Tuns*, 13 M. & W. 466.) And until the award be executed it has no force.

Publication of award.

524. *Publication of Award.*—When the award is made, the arbitrator should give notice to the parties or their attorneys that it is ready for delivery, and the award is considered to be published only from the date of such notice: (*Brooke* v. *Mitchell*, 6 M. & W. 477.)

Alteration of award.

525. *Alteration of Award.*—The award cannot be altered in any material part after publication, or, as it would seem, after execution, without the assent of both parties: (*Ex parte Cuerton*, 7 D. & R. 774.)

Stamp.

526. *Stamp.*—The award must be stamped with a 35*s.* stamp, and a progressive duty of 25*s.*

Effect of award.

527. *Effect of Award.*—The 77th section enacts, that "the award of the arbitrator or arbitrators, or umpire,

shall be entered as the judgment in the cause, and shall be as binding and effectual to all intents as if given by the Judge."

Setting aside the award, &c.

528. *Setting aside the Award, &c.*—The 77th section provides "that the Judge may, if he think fit, on application to him at the first Court held after the expiration of one week after the entry of such award, set aside any such award so given as aforesaid, or may, with the consent of both parties as aforesaid, revoke the reference, or order another reference to be made in manner aforesaid." The grounds on which the Superior Courts will set aside an award are thus enumerated in Chitty's Archbold, p. 1486, *et seq.*

1st. That the arbitrator has not pursued the submission, or has in any other respect exceeded his authority.

2nd. That the award is uncertain or ambiguous.

3rd. That the award is not final, either by reason of not deciding all the matters referred, or otherwise, making subsequent proceedings necessary.

4th. That the award is inconsistent.

5th. That the award is illegal.

6th. That the proceedings were irregular or fraudulent.

7th. That the arbitrator has misconducted himself, &c.

8th. That it appears on the face of the award that the arbitrator has mistaken the law.

9th. That the award is bad in a part not separable from the residue.

Enforcing performance of award.

529. *Enforcing Performance of Award.*—As by the 77th section it is provided, that "the award shall be entered as the judgment in the cause, and shall be as binding and effectual to all intents as if given by the Judge," it follows that execution may issue as in ordinary cases.

CAP. X.

SUMMONS ON JUDGMENT.

Cap. 10.
Summons on Judgment.

This very important branch of the jurisdiction of the County Court is given by sect. 98, as follows:—

Section 98.

Parties having obtained an unsatisfied judgment may obtain a summons on charge of fraud.

Sect. 98. And be it enacted, that it shall be lawful for any party who has obtained any unsatisfied judgment or order in any Court held by virtue of this Act, or under any Act repealed by this Act, for the payment of any debt or damages or costs, to obtain a summons from any County Court within the limits of which any other party shall then dwell or carry on his business, such summons to be in such form as shall be directed by the rules made for regulating the practice of the County Courts as herein provided, and to be served personally upon the person to whom it is directed, requiring him to appear at such time as shall be directed by the said rules to answer such things as are named in such summons.

And the practice is regulated by the following rule.

Rule 38.

Practice as to judgment summons.

Time of service.

Rule 38. Every summons for a party to appear to be examined upon oath, pursuant to the 98th section of the said Act, shall be served not less than three clear days before the day on which the party is required to appear to such summons: provided always, that service of such summons at any time before the time appointed for the appearance of such party, may be deemed by the Judge to be good service, if it shall be proved to his satisfaction, that such party was about to remove out of the jurisdiction of the Court.

It will be observed that the summons can only issue in the district wherein the party against whom it is sought dwells or carries on his business. And it makes no difference that the judgment or order had been obtained in another district.

The service of the summons must in all cases be personal.

It was held by the Judge of the Gloucestershire Court, in *Gray* v. *Giles* (1 C. C. Chron. 15), and by the Judge of the Westmoreland Court, in *Rudd* v. *Dobson*, *ib.*, that this section did not apply to judgments recovered in the old County Court, as that was a Court holden at common law, and not under any Act repealed by the 9 & 10 Vict. c. 95. *Gray* v. *Giles*. *Rudd* v. *Dobson*.

The following is the form of a Judgment Summons.

SUMMONS TO DEFENDANT AFTER JUDGMENT.

No.

In the County Court of *at*

(Seal.)

Between { *A. B., Plaintiff*, *and* *C. D., Defendant.* }

Whereas at a County Court held at, &c., on, &c., the above-named plaintiff obtained a judgment [or *order*] *against you for payment of* *for* *which said judgment* [or *order*] *still remains unsatisfied; you are therefore hereby summoned to appear at the County Court to be holden at, &c., on, &c., at the hour, &c., to be then and there examined by the Judge of the said Court, touching your estate and effects, and the manner and circumstances under which you contracted the said debt* [or *incurred the damages* or *liability*] *which was the subject of the action in which the said judgment was obtained against you, and as to the means and expectation you then had, and as to the property and means you still have of discharging the said debt* [or *damages* or *liability*], *and as to the disposal you may have made of any property. And take notice, that if you do not appear in obedience to this summons, you may, by order of this Court, be committed to the common gaol* [or other prison of the Court.] Form of summons.

Given under the seal of the Court, this *day of* 18 .

By the Court,

Clerk.

	£		
Amount of judgment or order .			
Costs of this summons			

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§ 530. *Proceedings after Appearance.*—If the defendant appears he may be examined touching his circumstances, &c.

Proceedings after appearance. *Section* 98. Examination

Sect. 98. And if he shall appear in pursuance of such summons, he may be examined upon oath touching his estate and effects, and the manner and circumstances under which he contracted the debt or incurred the damages or liability which is the subject of the action in which judgment has been obtained against him; and as to the means and expectation he then had, and as to the property and means he still hath, of discharging the said debt or damages or liability, and as to the disposal he may have made of any property; and the person obtaining such summons as aforesaid, and all other witnesses whom the Judge shall think requisite, may be examined upon oath touching the inquiries authorized to be made as aforesaid; and the costs of such summons and of all proceedings thereon shall be deemed costs in the cause.

WARRANT OF COMMITMENT AFTER EXAMINATION.

No.

In the County Court of *at*

Between *A. B., Plaintiff,* *and* *C. D., Defendant.*

To the High Bailiff and the other Bailiffs of the said Court, and all constables and peace officers within the jurisdiction of the said Court, and to the Governor or Keeper of .

Whereas at a County Court holden at *on the* *day of* *in the year of our Lord* 18 , *the above-named plaintiff, by the judgment of the said Court, in a certain suit wherein the said Court had jurisdiction, recovered against the above-named defendant the sum of* £ *for his debt* [or *damages*, as the case may be], *together with the sum of* £ *the costs of the said suit; and thereupon it was then and there ordered by the said Court, that the said defendant should pay to the said plaintiff the sums of* £ *and* £ *so recovered against the said defendant as aforesaid, on or before the* *day of, &c.* [as the case may be]: *And whereas the said defendant not having paid the said sums of* £ *and* £ *pursuant to the said order, upon the application of the said plaintiff, a summons was duly issued from and out of*

the said Court against the said defendant, by which said summons the said defendant was required to appear at the said County Court of at on the day of, &c., to answer such questions as might be put to him touching [set out as in the summons]*: And whereas the defendant having duly appeared at the said Court pursuant to the said summons, was examined touching, &c.* [as in the summons]: *And whereas it appeared upon such examination to the satisfaction of the Judge of the said Court, that* [here insert the particular ground of commitment], *and thereupon it was ordered by the said Judge, that the said defendant should be committed for the term of days to the in the according to the form of the statute in that case made and provided, or until he should be discharged by due course of law: These are therefore to require you, the said High Bailiff, Bailiffs, and others, to take the said defendant, and to deliver him to the governor, &c.* [or *keeper, &c.*]*; and you the said governor* [or *keeper, &c.*] *are hereby required to receive the said defendant, and him safely to keep in the for the term of days, from the arrest under this warrant, or until he shall be sooner discharged by due course of law. For which this shall be your sufficient warrant.*

Given under the seal of the Court, this day of 18 .

(Seal.)

Clerk of the said Court.

The warrant must show on the face of it that the debtor has been summoned to show cause why he has made default in payment: (*Ex parte Kinning*, 1 Cox & Macrae, 16.)

531. *Proceedings where the Party summoned does not appear, or does not answer to the Satisfaction of the Judge.*—If the party does not appear, or, in case he does appear, it shall appear that he has been guilty of misconduct in incurring or in not paying the debt, the Judge may commit.

Proceedings where the party summoned does not appear, or does not answer to the satisfaction of the Judge.

Sect. 99. And be it enacted, that if the party so summoned shall not attend as required by such summons, and shall not allege a sufficient excuse for not attending, or shall, if attending, refuse to be sworn, or to disclose any of the things aforesaid, or if he shall not make answer touching the same to the satisfac-

Section 99. Commitment for frauds, &c.

tion of such Judge, or if it shall appear to such Judge, either by the examination of the party or by any other evidence, that such party, if a defendant, in incurring the debt or liability which is the subject of the action in which judgment has been obtained has obtained credit from the plaintiff under false pretences, or by means of fraud or breach of trust, or has wilfully contracted such debt or liability without having had at the same time a reasonable expectation of being able to pay or discharge the same, or shall have made or cause to be made any gift, delivery, or transfer of any property, or shall have charged, removed, or concealed the same, with intent to defraud his creditors or any of them, or if it shall appear to the satisfaction of the Judge of the said Court that the party so summoned has then, or has had since the judgment obtained against him, sufficient means and ability to pay the debt or damages or costs so recovered against him, either altogether, or by any instalment or instalments which the Court in which the judgment was obtained shall have ordered, and if he shall refuse or neglect to pay the same as shall have been so ordered, or as shall be ordered pursuant to the power hereinafter provided, it shall be lawful for such Judge, if he shall think fit, to order that any such party may be committed to the common gaol or house of correction of the county, district, or place in which the party summoned is resident, or to any prison which shall be provided as the prison of the Court, for any period not exceeding forty days.

WARRANT OF COMMITMENT IN DEFAULT OF APPEARANCE.

No.

In the County Court of *at*

Between { *A. B., Plaintiff,* *and* *C. D., Defendant.* }

To the High Bailiff and the other Bailiffs of the said Court, and all constables and peace officers within the jurisdiction of the said Court, and to the Governor or Keeper of

Whereas at a County Court duly holden at *on the* *day of* *in the year of our Lord* 18 , *the above-named plaintiff, by the judgment of the said Court, in a certain suit wherein the said Court had jurisdiction, recovered against*

the above-named defendant the sum of £ for his debt [or *damages*, as the case may be,] *together with the sum of £ the costs of the said suit, and thereupon it was then and there ordered by the said Court, that the said defendant should pay to the said plaintiff the said sums of £ and £ so recovered against the said defendant as aforesaid, on or before the day of, &c.* [as the case may be]: *And whereas the said defendant not having paid the said sums of £ and £ pursuant to the said order, upon the application of the said plaintiff, a summons was duly issued from and out of the said Court against the said defendant, by which said summons the said defendant was required to appear at the said County Court of at on the day of, &c. to answer such questions as might be put to him touching* [set out as in the summons]: *And whereas it was duly proved upon oath at the said last-mentioned Court, that the said defendant was personally served with the said summons: And whereas the said defendant did not attend as required by such summons, or allege any sufficient excuse for not so attending, and thereupon it was ordered by the Judge of the said Court, that the said defendant should be committed for the term of days to the in the according to the form of the statute in that case made and provided, or until he should be discharged by due course of law: These are, therefore, to require you, the said High Bailiff, Bailiffs, and others, to take the said defendant, and to deliver him to the governor, &c.* [or *keeper, &c.*;] *and you the said governor* [or *keeper, &c.*] *are hereby required to receive the said defendant, and him safely to keep in the for the term of days, from the arrest under this warrant, or until he shall be sooner discharged by due course of law. For which this shall be your sufficient warrant.*

Given under the seal of the Court, this day of 18 .

(Seal.)

Clerk of the said Court.

532. *Power of the Judge to rescind or alter Orders.* —**The Judge may rescind any order for committal, &c.**

Sect. 100. And be it enacted, that it shall be lawful for the Judge of any Court before whom such summons shall be heard,

Section 100. — Power of Judge to

BOOK VI. THE PRACTICE. — Cap. 10. Summons on Judgment. — rescind or alter orders.

if he shall think fit, whether or not he shall make any order for the committal of the defendant, to rescind or alter any order that shall have been previously made against any defendant so summoned before him for the payment, by instalments or otherwise, of any debt or damages recovered, and to make any further or other order, either for the payment of the whole of such debt or damages and costs forthwith, or by any instalments, or in any other manner as such Judge may think reasonable and just.

This section not only gives the Judge power to alter orders made by himself, but also orders made by any other Judge, as the judgment debtor must be summoned before the Court of the district wherein he resides or carries on his business. In ordinary cases one Judge has no power to alter the judgments or orders of another, nor has he even power to alter his own judgment after the Court is over in which the

Jones v. *Jones*. judgment was pronounced: (*Jones* v. *Jones*, 1 Cox & Macrae, 92.) Where, however, a party is summoned under the 98th section, the Judge may not only commit for fraud, but may also in addition, or in lieu of such commitment, either alter or vary the order and time of payment as he may think fit. But this power can only be exercised in open Court on the return of the summons, or at some adjournment of the proceedings under it.

533. *Power of the Judge to examine and commit at the Hearing of the Cause.*—The Judge has further power to examine and commit at the hearing of the case.

Section 101. — Power to examine and commit at hearing of the cause.

Sect. 101. And be it enacted, that in every case where the defendant in any suit brought in any County Court shall have been personally served with the summons to appear or shall personally appear at the trial of the same, the Judge at the hearing of the cause, or at any adjournment thereof if judgment shall be given against the defendant, shall have the same power and authority of examining the defendant and the plaintiff and other parties touching the several things hereinbefore mentioned, and of committing the defendant to prison, and of making an order, as he might have and exercise under the provisions hereinbefore contained in case the plaintiff had obtained a summons for

that purpose after the judgment obtained as hereinbefore mentioned.

This section applies only to defendants, but the words of the 98th section seem extensive enough to include a plaintiff if he refuses to pay the defendant's costs when so ordered. The words are, "*any party*," &c. "for payment of any debt or damages, *or costs*."

WARRANT OF COMMITMENT WHERE DEFENDANT APPEARS AND IS EXAMINED AT THE TIME OF HEARING.

No.

In the County Court of *at*

Between { *A. B., Plaintiff,* *and* *C. D., Defendant.* }

To the High Bailiff, and the other Bailiffs of the said Court, and all constables and peace officers within the jurisdiction of the said Court, and to the Governor or Keeper of the gaol at

Whereas at a Court now holden at *on this* *day of* *in the year of our Lord* 18 , *the above-named plaintiff, by the judgment of the said Court, in a certain suit wherein the said Court had jurisdiction, recovered against the above-named defendant the sum of* £ *for his debt* [or *damages*], *together with the sum of* £ *the costs of the said suit; and thereupon it was then and there ordered by the said Court, that the said defendant should forthwith pay to the said plaintiff the said sums of* £ *and* £ *so recovered against the said defendant: And whereas, the said defendant having personally appeared to the said summons, and being present in Court, was, upon the application of the said plaintiff, then and there examined touching* [set out as in the summons]: *And whereas it appeared upon such examination, to the satisfaction of the Judge of the said Court, that* [here insert the particular ground of commitment]: *and thereupon the said Judge of the said Court, by a certain order bearing date the* *day of* *did order and adjudge the said defendant to be committed for the term of* *days to the* *in the* *or until he should be discharged by due course of law: These are,*

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therefore, to require you the said High Bailiff, Bailiffs, and others, to take the said defendant, and to deliver him to the governor, &c. [or *keeper, &c.;*] *and you the said governor* [or *keeper, &c.*] *are hereby required to receive the said defendant, and him safely to keep in the &c. for the term of days from the arrest under this warrant, or until he shall be sooner discharged by due course of law. For which this shall be your sufficient warrant.*

Given under the seal of the Court, this day of 18 .

(Seal.)

Clerk of the said Court.

534. *Mode of issuing and executing Warrants of Commitment.*—When an order has been made, the Clerk of the Court is required to issue a warrant to the Bailiff.

Section 102.

Mode of issuing and executing warrants of commitment.

Sect. 102. And be it enacted, that whenever any order of commitment shall have been made as aforesaid the Clerk of the said Court shall issue under the seal of the Court a warrant of commitment, directed to one of the Bailiffs of any County Court, who by such warrant shall be empowered to take the body of the person against whom such order shall be made; and all constables and other peace officers within their several jurisdictions shall aid in the execution of every such warrant; and the gaoler or keeper of every gaol, house of correction, and prison mentioned in any such order shall be bound to receive and keep the defendant therein until discharged under the provisions of this Act, or otherwise by due course of law; and no protection, order, or certificate granted by any Court of Bankruptcy, or for the relief of insolvent debtors, shall be available to discharge any defendant from any commitment under such last-mentioned order.

Effect of imprisonment.

535. *Effect of Imprisonment.*—Imprisonment is not to operate as a satisfaction.

Section 103.

Imprisonment not to operate as a satisfaction for the debt.

Sect. 103. And be it enacted, that no imprisonment under this Act shall in anywise operate as a satisfaction or extinguishment of the debt or other cause of action on which a judgment has been obtained, or protect the defendant from being anew summoned and imprisoned for any new fraud or other default

rendering him liable to be imprisoned under this Act, or deprive the plaintiff of any right to take out execution against the goods and chattels of the defendant, in the same manner as if such imprisonment had not taken place.

Though the imprisonment is not to affect the right of the creditor to issue a *fi. fa.*, it would seem that such right is suspended during the continuance of the imprisonment, for the words of the section "had not taken place" refer to an imprisonment which had already actually terminated. And this was the construction adopted by Mr. MOYLAN, Judge of the Westminster Court, in *Pratt* v. *Owen* (1 C. C. Chron. 174.) A defendant cannot be imprisoned more than once for the same fraud, or the same default in payment, but he may be summoned anew, and committed for any new fraud or other default, as often as such may occur.

Pratt v. *Owen.*

The nature and the object of the power of examination and commitment given to the County Court Judges have been very fully discussed by the Courts of Queen's Bench and Common Pleas in the case of *Ex parte Kinning* (1 Cox & Macrae, 1, 17.) That was an application to discharge Kinning, who had been brought up on a *habeas corpus*, out of custody. The prisoner had been committed by a County Court Judge for nonpayment of instalments. The ground of the application was, that the warrant did not show that the debtor had been summoned. The Court of Queen's Bench were equally divided on the point, but the Court of Common Pleas came to an unanimous decision that the warrant was bad. The judgment of WILDE, C. J., contains so able an exposition of the power of commitment possessed by the Judges of the County Courts, that we cannot do better than insert it here at length.

Ex parte Kinning.

WILDE, C. J.—The Court have looked very anxiously on the question which arises in this case, as they would naturally do when it has been before another Court of such high authority, which could not come to a satisfactory conclusion on the question, those very learned persons having differed in the construction to be placed on this statute, and having considered all this, we think that this return is not sufficient, and that the defendant is entitled to be discharged by reason of the deficiency of the warrant under which he was taken into custody. This statute is, to a considerable extent penal, because it gives a

Judgment.

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power of imprisonment not by way of satisfaction of the debt. If a defendant is taken into custody under this Act, it is so framed as to reserve to the plaintiff his right to obtain satisfaction of his debt afterwards. It was otherwise under the old law, but here it is simply used by way of punishment or coercion, and the party is subjected to imprisonment according to the circumstances of his particular case. It appears by the section in question that if a party wishes to recover or enforce payment of his debt he is to apply to some one of these Courts for an order on his debtor, and he is to be summoned, and an inquiry is to take place in the matter. One material part of this inquiry is his means of payment; and the Act infers a discretionary power, for the Judge is to exercise his discretion with regard to the time to be given for payment of the debt; that discretion depending principally on the means of the individual to pay. He has power to commit in certain cases pointed out by the Act of Parliament, such as the concealment of property, or misconduct in the mode of contracting the debt; but that imprisonment is not in satisfaction of a debt; it is punishment for misconduct in the original contraction of the debt. But, among other things, a power is given to inquire: he is to inquire into the means of the party to pay, and if he has means and does not pay immediately, it is to be adjudged when he is to pay. If he can presently pay, he is to be ordered presently to pay; and if he does not do so, he may be committed. But it is obvious it must be clearly known as material to that Act whether, at the time he makes default, he had the means of payment; for it is to be observed that this statute only deals with the person of the debtor, and leaves all the modes of acting with regard to property under the old Acts untouched. By the present Act an additional remedy is provided against the person under certain circumstances, apparently with the view of punishing him: but this remedy is only in force on the Judge being satisfied that he wilfully withholds payment, and has the means of making it. The Act is founded, apparently, on the inhumanity of sending a man to prison when he has not the means of paying, reserving a power to punish him if there is fraud found connected with the debt. The course of proceeding is this: it appears the party is to be summoned, and an inquiry is to be made as to his means of payment; and if it appears that he has the means of payment, by instalments or otherwise, he shall be ordered to pay accordingly. It is necessary in the outset that the commissioner shall exercise a discretion as to the periods to be named for payment. It is necessary that he should inquire into the then circumstances of the party, and as to his future means of payment, because his not being ordered to pay at once presupposes that he has not the means of paying then, and therefore there must be an inquiry as to his future means of paying: for if he have the present means of paying, he is to pay; and it is only on the presumption that he has not

the present means of paying, that the Judge, under this Act of Parliament, would be authorized, acting in the spirit of the Legislature, to grant time for the payment. Well, then, if time is granted, with reference to what object is it granted? With reference to the subject of the means—the probable means, at the period when the payment is directed to be made,—it appears, as to that point, that after the Judge shall have made an order specifying the certain periods of payment—there is to be no other inquiry upon the subject—if the debtor do not pay, but has the means of paying the amount; according to the order of the Judge, there is a power to commit for a term not exceeding forty days. What is to regulate the Judge in prescribing the period of time for which the party is to be committed? You find that the original order is to be framed with reference to the means of payment; what is to be the foundation of the judgment to be formed with regard to the time for which the party is to be committed? Can it be doubted but that the debtor's means of paying must be at least one of the essential points of the inquiry? And if that is to be one of the essential points of that inquiry, the Judge cannot by possibility make an effectual inquiry into the means of paying, or at least with any certainty of his conclusion being well founded, unless he has heard the party who must best know with certainty the means he has of payment, and who is the only person to know his means of payment. And with regard to payment, many circumstances might exist of bodily misfortune, disappointment, and loss, which the creditor might have no means of knowing, or any other person likely to be brought before the Judge by the creditor. As the period for commitment, therefore, is discretionary, it would seem that the inquiry is to regulate the discretion: and whereas inquiry is necessary to regulate the discretion, common justice and general principles of right will require that the party most interested in the result of the inquiry—the party most fully possessed of the means of best answering satisfactorily the object of pursuing the inquiry—should be heard. When, therefore, the Act distinctly points to an inquiry of some kind, or some sort, as it must be taken to do when it makes the period of imprisonment discretionary, it seems to follow that it is left to the general principles as to the parties to be heard upon such inquiry so to take place, and as it may make a most material difference, and must make some difference to the party whether he is to be committed for two days, or for a week, or for forty days, while there remains matter upon which the judicial mind is to be exercised, it seems to follow that the party who possesses the best means of giving the information, and who is deeply interested in the result of the inquiry, should be heard. Here is, therefore, something for inquiry, for that inquiry which is made the foundation of the judicial discretion. How can it be meant that there is to be an exclusion of the party from being heard on inquiry, and, on that inquiry, on facts and circum-

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stances more immediately connected with his own condition? When, therefore, it distinctly points to a summons, hearing and examination in the first instance, and when it points to a subsequent inquiry, unaccompanied by any words excluding those ordinary means of judicial information, namely, by hearing the party interested in the inquiry at all, the safest rule of construction is, that the party should have notice before he is committed. We find the statute based altogether upon the principle that a debtor shall not be imprisoned who has not the means of paying; and that being the principle of the Act, I think it is best construed by saying that the Judge should have the means of forming a distinct judgment, before he determines on the commitment, which is not to be by way of satisfaction, but by way of punishment. Feeling that doubt and hesitation in my own judgment, which I ever must feel when I hear the learned Judges of the Queen's Bench have entertained a different opinion, I am yet constrained to say, that the construction most consonant with the views of the Legislature, and most consistent with general principles, and with the proper administration of justice, and the true construction of the Act itself, is, that when default is made, if the creditor asks for the commitment, in order that the Judge may have the proper means of knowing what is the proper period of commitment, the debtor, who may have the means of laying before him the circumstances within his knowledge, must be summoned. I think, under the circumstances of this case, the warrant is defective in the two respects pointed out, and therefore this rule ought to be discharged.

536. *To what Prisons Parties may be committed.*—It having been found inexpedient to continue the power of the County Court Judges to commit to houses of correction, the stat. 12 & 13 Vict. c. 101 was passed, by which it is provided that persons committed under the provisions of the County Courts Act, shall be committed to the debtors' prison.

12 & 13 Vict. c. 101.

Section 1. — 9 & 10 Vict. c. 95.

Sect. 1. Whereas by an Act passed in the tenth year of Her present Majesty, intituled "An Act for the more easy Recovery of Small Debts and Demands in England," power is given to the Judge in the cases therein mentioned to order that a party summoned in respect of an unsatisfied judgment or order, or a defendant in any suit, may be committed to the common gaol or house of correction of the county, district, or place in which such party or defendant is resident, or to any prison which should be provided as the prison of the Court, for any period not exceeding forty days: and whereas it is inexpedient that persons should be committed under the said Act to houses of

correction: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that from and after the thirty-first day of August one thousand eight hundred and forty-nine so much of the said Act as authorizes any Judge to order any such party or defendant to be committed as hereinbefore mentioned shall be repealed; and it shall be lawful for any Judge who would have been authorized under the said Act to order any party or defendant to be committed as aforesaid for any such period as aforesaid, to order such party or defendant to be committed for the like period to the common gaol wherein the debtors under judgment and in execution of the Superior Courts of justice may be confined for the county, city, borough, or place in which such party or defendant is resident, or to any other gaol or debtors' prison for the same county, city, borough, or place which shall by any declaration of one of Her Majesty's principal Secretaries of State be allowed as a place of imprisonment for persons committed under the said Act, so long as such declaration shall remain in force and unrevoked, or to any prison which has been or shall be provided as in the said Act mentioned as the prison of the Court by the Judge of which such order may be made; and all the provisions of the said Act applicable to and consequent upon the order for commitment under the power hereinbefore repealed, and to the prisons to which persons might be committed under such order, shall apply to and be construed with reference to any order made under the power hereinbefore contained, and the prisons to which persons may be committed under such order.

To what prisons persons may be committed under recited Act for frauds, &c.

By the 2nd section the same provisions are extended to commitments for contempt.

Section 2.

To what prisons persons may be committed under the said Act, for contempt.

Sect. 2. And whereas by the said Act of the tenth year of Her Majesty it was enacted, that if any person should wilfully insult the Judge, or any Juror, or any Bailiff, Clerk, or officer of the Court for the time being, during his sitting or attendance in Court, or in going to or returning from the Court, or should wilfully interrupt the proceedings of the Court, or otherwise misbehave in Court, the Judge

BOOK VI. THE PRACTICE. *Cap.* 10. *Summons on Judgment.*

should be empowered, if he should think fit, by a warrant under his hand, and sealed with the seal of the Court, to commit any such offender to any prison to which he had power to commit offenders under the said Act for any time not exceeding seven days, or to impose upon any such offender a fine not exceeding five pounds for every such offence, and in default of payment thereof to commit the offender to any such prison as aforesaid for any time not exceeding seven days, unless the said fine were sooner paid: be it enacted, that from and after the thirty-first day of August one thousand eight hundred and forty-nine so much of the last-recited enactment as authorizes the Judge to commit any such offender to any such prison as therein mentioned shall be repealed, and in any case in which any Judge would under such enactment have been authorized to commit any such offender to any such prison as mentioned, for such period as therein mentioned, such Judge shall be empowered, if he think fit, by warrant, as therein mentioned, to commit such offender for the like period to any common gaol wherein the debtors under judgment and in execution of the Superior Courts of justice may be confined, for any county, city, borough, or place wholly or in part within any district of such Judge, or to any other gaol or debtors' prison for any such county, city, borough, or place which shall by declaration as aforesaid be allowed as a place of imprisonment for persons committed under the said Act, so long as such declaration shall remain in force and unrevoked, or to any prison which has been or may be provided, as in the said Act mentioned, as the prison of the Court by the Judge of which such offender shall be committed.

But if the debtors' prison be situated at an inconvenient distance, the Secretary of State may authorize commitment to the house of correction.

Section 3.

Where debtors' prison is situated at an inconvenient distance or crowded,

Sect. 3. Provided always, and be it enacted, that where, by reason of any common gaol wherein debtors under judgment and in execution of the Superior Courts of justice may be confined being situated at an inconvenient distance, or of the crowded state of any such gaol, or otherwise, it shall appear to one of Her Majesty's principal Secretaries of State expedient so to do, it shall be lawful for such Secretary of State, by order under

his hand, to authorize to be used for the purposes of commitments under the said Act of the tenth year of Her Majesty any house of correction or common gaol in which such debtors as aforesaid may not be confined (to be mentioned in such order), and to make orders for altering the regulations of such house of correction or gaol as last aforesaid, so far as respects the treatment of persons to be committed under this Act, in order that such persons may be treated as nearly as may be in like manner as if they had been committed to a gaol in which such debtors as aforesaid may be confined, notwithstanding the regulations in force in such house of correction or gaol to which such persons may be committed; and every such order may from time to time be revoked or varied by such Secretary of State as occasion may require.

Secretary of State may authorize commitment to house of correction.

Section 4.

Gaols maintained by lords of liberties and private persons not to be used without their consent.

Sect. 4. Provided also, and be it enacted, that where, under the provisions hereinbefore contained, persons might be committed to any gaol or prison not now used for the purposes of the said Act which by reason of the tenure of any liberty or franchise, or otherwise, is maintained at the private charges of the lord of such liberty or franchise, or of any other private person, such gaol or prison shall not be used for the purposes of commitments under the said Act until such lord or person as aforesaid shall have given his consent in writing to such gaol or prison being so used.

Section 5.

9 & 10 Vict. c. 95.

Sect. 5. And whereas by the said Act of the tenth year of Her Majesty, it was enacted, " that it should be lawful for any Court holden under that Act, with the approval of one of Her Majesty's principal Secretaries of State, to use as a prison for the purposes of that Act any prison then belonging to any Court holden under any of the Acts cited in the schedules (A.) and (B.) to that Act, in all cases where it should appear to the said Secretary of State that the common gaol or house of correction of the county, district, or place in which the Court was established was inconveniently situated, or was not applicable for the use of the said Courts; and whenever any such prison should be so allowed to be used it should be deemed one of the common gaols of the county for which it should be used, as if it had been provided after presentment of the insufficiency of one common gaol for such county under

5 & Vict. c. 98.

A prison used under recited enactment for any riding, parts, or division of a county, to be deemed a common gaol for such riding, parts, or division.

the provisions of an Act passed in the sixth year of the reign of Her Majesty, intituled "An Act to amend the Laws concerning Prisons:" and whereas a prison used under the said recited enactment for a division of a county may be deemed a gaol for the county at large: be it declared and enacted, that where a prison allowed to be used with the approval of such Secretary of State shall be so used for any riding, parts, or division of a county having a distinct commission of the peace, or a distinct rate in the nature of a county rate applicable to the maintenance of a prison for such riding, parts, or division (and not for the county at large), such prison shall be deemed one of the common gaols for the riding, parts, or division for which it is so used (and not for the county at large), as if it had been provided after presentment of the insufficiency of one common gaol for such riding, parts, or division under the said Act of the sixth year of Her Majesty.

CAP. XI.

RECORDS.

The Clerk of the Court is required to enter of record in a book kept for the purpose, all the proceedings of the Court.

Section 111.

Minutes of proceedings to be kept.

Sect. 111. And be it enacted, that the Clerk of every Court holden under this Act shall cause a note of all plaints and summonses, and of all orders, and of all judgments and executions, and returns thereto, and of all fines, and of all other proceedings of the Court, to be fairly entered from time to time in a book belonging to the Court, which shall be kept at the office of the Court; and such entries in the said book, or a copy thereof bearing the seal of the Court, and purporting to be signed and certified as a true copy by the Clerk of the Court, shall at all times be admitted in all Courts and places whatsoever as evidence of such entries, and of the proceeding referred to by such entry or entries, and of the regularity of such proceeding, without any further proof.

CAP. XII.

WRIT OF ERROR.

Book VI. The Practice.

Cap. 12. *Writ of Error.*

Section 108.

The 108th section provides that the judgment in the County Court shall be final, thus :—

No execution shall be stayed by writ of error.

Sect. 108. And be it enacted, that no judgment or execution shall be stayed, delayed, or reversed upon or by any writ of error, or *supersedeas* thereon, to be sued for the reversing of any judgment given in any Court holden under the provisions of this Act.

And 13 & 14 Vict. c. 61, s. 15 :—

13 & 14 Vict. c. 61, s. 15.

Appeal to be in the form of a case agreed on by both parties, but if they cannot agree Judge to settle and sign it.

Sect. 15. And be it enacted, that such appeal shall be in the form of a case agreed on by both parties, or their attorneys, and if they cannot agree the Judge of the County Court, upon being applied to by them or their attorneys, shall settle the case, and sign it; and such case shall be transmitted by the appellant to the rule department of the Master's office of the court in which the appeal is to be brought.

537. *No second suit for the same cause of action.*— It is thus enacted by section 18 of the Extension Act :

18. No second suit in second court for the same cause.

Treble costs.

Sect. 18. And be it enacted, that if any party shall sue another in any County Court for any debt or other cause of action for which he hath already sued him and obtained judgment in any other court, the proof of such former suit having been brought and judgment obtained may be given, and the party so suing shall not be entitled to recover in such second suit, and shall be adjudged to pay three times the costs of such second suit to the opposite party.

Removal of Cause.—See Certiorari, *ante*, p. 349.

CAP. XIII.

ACTIONS BY AND AGAINST EXECUTORS AND ADMINISTRATORS.

Executors and administrators may sue and be sued in the County Courts.

Sect. 66. And be it enacted, that it shall be lawful for any executor or administrator to sue and be sued in any Court holden under this Act in like manner as if he were a party in his own right and judgment, and execution shall be such as in the like case would be given or issued in any Superior Court.

Section 66. Executors may sue and be sued.

The words of this section are very general, and seem at first view to give an executor the right to sue in every case in which his testator might have sued; but, if we take the whole section together, the natural construction seems to be, that executors and administrators may sue and be sued in the County Court in the same manner and for the same causes of action as they may sue or be sued in the Superior Courts.

538. *Judgments for and against an Executor.*

Rule 27. Execution on a judgment is not to issue by or against any person not a party to such suit, without a plaint and summons upon the judgment, the proceedings in which shall be the same as in ordinary cases.

Rule 27. Execution not to issue without plaint and summons.

Rule 28. Where a judgment has been given for or against a person deceased, his executors or administrators may in the same manner sue or be sued upon the judgment.

Rule 28. Executors or administrators may sue or be sued.

539. *Summons and Subsequent Proceedings.* — The form of a summons to (or at the suit of) an executor or administrator is the same as in ordinary cases, excepting only that it should state that the party sues

Summons and subsequent proceedings.

or is sued in his representative character. The other proceedings also to judgment are the same as in ordinary cases. The judgment, however, varies according to the nature of the defence, as will be seen by the following rules.

Rule 29. Ordinary judgment *against executors.*

Rule 29. The ordinary judgment against executors or administrators shall be, to pay the debt or damages and costs to be levied out of the goods of the deceased in their hands, and as to the costs, if there are no such goods, then to be levied out of their own goods.

Rule 30. Judgment when the defence is *plene administravit.*

Rule 30. Where the defence is, that executors or administrators have fully administered, if it be adjudged by the Court that they have assets not administered, then a like judgment shall go as in the above case, but only as to the goods of the deceased, to the amount proved to be in their hands, and of assets *quando acciderint*, as to the residue: the judgment as to costs shall be, that they be levied *de bonis testatoris si, &c. et si non, de bonis propriis.*

Rule 31. Judgment when *plene administravit* is the *sole* defence.

Rule 31. If the sole defence by executors or administrators be, that they have fully administered, and the judgment of the Court is for the defendants, it shall be, that the amount found to be due be paid and levied out of the assets of the deceased *quando acciderint*, and the costs shall be in the discretion of the Judge.

The following is the form of an

EXECUTION AGAINST THE GOODS OF A TESTATOR.

No.

In the County Court of *at*

(Seal.)

Between { *A. B., Plaintiff,* *and* *C. D., Executor of E. F., deceased, Defendant.* }

Whereas at a Court duly holden at *within the jurisdiction of the said Court, on the* *day of* *before* *the Judge of the said Court, the said plaintiff, by the consideration and judgment of the said Court, recovered against the said defendant, as executor* [or *administrator*] *of E. F. deceased, the sum of £* *for a certain debt before that time due and owing to the said plaintiff by the said E. F., in his*

lifetime, together with the sum of £ for his costs of suit, by the said plaintiff in that behalf expended: And whereas the said defendant, by an order of the said Court, bearing date the day and year aforesaid, was ordered to pay the said debt [or *damages*] *together with the said costs, amounting together to the sum of £* [state the time for payment]: *And wheras the said sum of £ has not been paid to the said plaintiff, pursuant to the said order: These are therefore to require and order you forthwith to make and levy by distress and sale of the goods and chattels which were the property of the said E. F. in his lifetime, in the hands of the said defendant to be administered, wheresoever they may be found within the district of this Court, the said sum of £ , together with the costs of this execution; and also to seize and take any money or bank notes (whether of the Bank of England or of any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money, which were the property of the said E. F. in his lifetime, which may there be found, or such part or so much thereof as may be sufficient for the satisfying of this execution and the costs of making and executing the same, if the said defendant hath so much thereof in his hands to be administered, and if he hath not so much thereof in his hands to be administered, then that you make and levy of the proper goods and chattels, money, or bank notes (whether of the Bank of England or of any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money, of the said defendant, the sum of £ for the costs and charges first above mentioned, and the costs of this execution, and of levying the same.*

Given under the seal of the Court, this day of 18 .

By the Court,

Clerk of the said Court.

To , High Bailiff of the said Court, and the other Bailiffs thereof.

Debt . . . . . £			
Costs			
Execution			

Notice.—The goods and chattels are not to be sold until after the end of five days next following the day on which they

BOOK VI. THE PRACTICE.

Cap. 13. Actions by and against Executors, &c.

may have been taken, unless they be of a perishable nature, or at the request of the said defendant.

540. *Mode of Proceeding on a Judgment of Assets quando acciderint.*—The plaintiff may, on a judgment of assets *quando acciderint*, proceed by plaint, suggesting that assets have come to the defendant's hands.

Rule 32.

Proceedings on a judgment of assets *quando acciderint*.

Rule 32. Where judgment has been given against executors and administrators, that the amount be levied upon assets of the deceased *quando acciderint*, the plaintiff may at any time proceed by plaint against them, suggesting that assets have come to their hands, and the Court shall proceed and give judgment thereon, if for the plaintiff, as in rule 29, and if for the defendants, they shall be entitled to their costs.

541. *Proceedings on a Devastavit.*—If it appears that the defendant has been guilty of a devastavit, the plaintiff may summon him before the Judge.

Rule 33.

Proceedings on a *devastavit*.

Rule 33. Where judgment has been given that the debt (or damages) and costs be levied *de bonis testatoris*, and the plaintiff complains that the defendants have been guilty of a *devastavit*, inasmuch as no goods of the deceased are forthcoming to satisfy the execution issued, then a summons may be taken out in the form given in the schedule, or to the like effect, and thereupon, as in ordinary cases, the Court shall proceed to the hearing and judgment; and if judgment be given against such executors or administrators, then it shall be that they pay the debt, or damages and costs, to be levied *de bonis testatoris si, &c. et si non, de bonis propriis.*

The following is the form of a

SUMMONS UPON A DEVASTAVIT.

No.

In the County Court of *at*

(Seal.)

Between { *A. B., Plaintiff,* *and* *C. D., Executor of E. F., deceased, Defendant.* }

You are hereby summoned to appear at a County Court to

be holden at on the day of at the hour of in the forenoon, to answer the above-named plaintiff in an action of contract, for that you, the defendant, have withheld, wasted, and put to your own use, divers goods and chattels which were the property of E. F., deceased, at the time of his death, and which came to the hands of you, the defendant, as executor of the said E. F., to be administered, whereby the judgment recovered against you by the said plaintiff at this Court [or *at the County Court held at in the county of*] *on the day of* [as the case may be] *remains unsatisfied.*

And take notice—[Conclude and add notice as in Form 1, page 383.]

JUDGMENT AGAINST AN EXECUTOR ON A DEVASTAVIT.

No.

In the County Court of at

(Seal.)

Between { *A. B., Plaintiff, and C. D., Executor of E. F., deceased, Defendant.*

Upon the hearing of this cause at a Court holden at on the day of it is adjudged that the said defendant, being the executor of E. F. deceased, hath made away, wasted, and put to his own use, divers goods and chattels [or *moneys, &c.* as the case may be], *which came to the hands of the said defendant as executor as aforesaid, to be administered, whereby a certain judgment recovered by the said plaintiff against the said defendant as executor as aforesaid, at a Court held on the day of remains unsatisfied, and that the said defendant do pay the sum of £ recovered by the said judgment, together with the sum of £ the costs of this suit, to the Clerk of the Court, at his office, on or before, &c.* [as the case may be]; *and it is further adjudged, that if the said defendant make default in payment thereof, an execution shall issue to make and levy the said several sums of £ and £ of the goods and chattels of the said E. F., if the said defendant hath so much thereof in his hands to be administered, and*

if he hath not so much thereof in his hands to be administered, then to be made and levied of the proper goods and chattels of the said defendant.

Given under the seal of the Court, this day of 18 .

By the Court.

Note.—The execution upon this order may be drawn from this form.

If an executor relies on a defence, which he can personally know to be false, the judgment against him is to pay debt and costs *de bonis propriis*.

Rule 34. Judgment where the defence is *ne unques executor*, &c.

Rule 34. Where in an action against executors or administrators, the defence is that they are not executors or administrators, or it is founded on some matter or thing arising since the death of the testator, or intestate, *ex. gr.* a release to the defendants, if the judgment of the Court be against them, it shall be, that the debt, or damages, and costs, be levied and paid *de bonis testatoris si, &c. et si non, de bonis propriis.*

EVIDENCE IN ACTIONS BY AND AGAINST EXECUTORS AND ADMINISTRATORS.

Actions by executors and administrators.

542. 1st. *Actions by Executors and Administrators.*—The plaintiff must prove his representative capacity by the production of the probate or letters of administration, as to which see *ante*, p. 453.

As to the cause of action, the evidence will be the same as in ordinary cases.

543. 2nd. *Actions against Executors and Administrators.*—The amount, or part of the amount, of a distributive share under an intestacy, or any legacy under a will, may be recovered in the County Court.

Section 65. Cases of partnership and intestacy.

Sect. 65. And be it enacted, that the jurisdiction of the County Court under this Act shall extend to the recovery of any demand, not exceeding the sum of twenty pounds, which is the whole or part of the unliquidated balance of a partnership account, or the amount or part of the amount of a distributive share under an intestacy, or of any legacy under a will.

An action will also lie against an executor for any debt due from the testator.

In an action against an executor or administrator, the plaintiff must prove the representative capacity of the defendant. In the case of an administrator or a rightful executor, this may be proved by the production of the letters of administration or probate.

If it is sought to make the defendant executor *de son tort*, proof of some acts of intermeddling with the goods of the deceased must be adduced. What acts will make a man executor *de son tort* is a question of law; but it is for the jury to say whether or not such acts are proved: (*Padget* v. *Priest*, 2 T. R. 97.) As to what is a sufficient intermeddling with the goods of the deceased to make a man liable as executor *de son tort*, see Bac. Abr. Executors, B. 3. Williams on Executors.

Evidence for the defendant.

Evidence for the Defendant.—The defendant may, 1st. Deny that he is executor or administrator. But if this issue is found against him, he becomes liable to pay debt and costs *de bonis propriis*. (Rule 34.)

2nd. He may show that he has already fully administered. If the defendant avers that he has administered all the testator's goods that have come to his hands, it lies upon the plaintiff to prove assets existing at the time of the entry of the plaint: (*Mara* v. *Quin*, 6 T. R. 10.) The inventory exhibited in the Ecclesiastical Court is a proof of assets. (B. N. P. 140.)

In answer to the proof of assets, the defendant may show that he had, before the entry of the plaint, exhausted those assets by payment of the debts of the deceased of as high or of a higher nature. The course of distribution is as follows:—

Priority of debts.

1st. Funeral expenses.

2nd. Expenses of proving the will, legacy duty, &c.

3rd. Debts due to the Crown by record or specialty.

4th. Certain debts created by particular statutes, as, for instance, debts due to a parish by an overseer. (17 Geo. 2, c. 38, s. 3.)

5th. Debts of record, due as such from the deceased.

6th. Debts due by specialty and rent.

7th. Debts on simple contract due to the Crown.

8th. Debts on simple contract generally. Among

which, wages of labourers and domestic servants are entitled to a preference: (*Read* v. *Blunt*, 5 Sim. 567.)

All debts, even those due on voluntary deeds, are to be paid before any part of the assets can be appropriated to pay legacies or distribute shares: (*Lechmere* v. *Carlisle*, 3 P. Wms. 222.)

Debts entitled to preference.

All specific and general legacies are to be paid in full, before the residuary legatee will be entitled to anything.

Legacies, when payable.

Legacies are not strictly payable until one year has elapsed after the testator's death, but the executor *may* pay them sooner if he likes: (*Wood* v. *Penoyre*, 13 Ves. 333; *Pearson* v. *Pearson*, 1 Scho. & Lefevre, 10.)

Retainer of debt.

The defendant may also prove, by way of defence, a retainer of a debt due to himself of an equal or a higher degree. An executor *de son tort* cannot, however, retain for his own debt, though of higher degree, and though the rightful executor after action brought has consented to the retainer: (*Curtis* v. *Vernon*, 3 T. R. 587.)

Plea of debts outstanding.

An executor or administrator may also show, by way of defence, that there are other debts of a higher nature outstanding. But it is open for the plaintiff to prove, in reply, that the bond was given or the judgment obtained by fraud: (see 2 Saund. 59, n.)

An executor or administrator may also plead the Statute of Limitations.

BOOK VII.

REPLEVIN.

544. *What it is.*—Replevin is the redelivery by the Sheriff to the owner of goods distrained, upon security being given that he will prosecute his suit against the distrainer, and return the goods if it be adjudged against him: (Bac. Abr. Replevin, A.) What it is.

545. *By whom.*—Any party who has either an absolute or qualified property in the goods distrained may replevy: (Gilb. Rep. 151.) Executors may have a replevin of the goods of the testator taken in his lifetime: (*ib.* 156.) And a husband may replevy goods belonging to his wife, distrained whilst she was a *feme sole: (ib.* 156.) By whom.

546. *Against whom.*—Replevin lies against the party who actually took or ordered the goods to be taken, and it may be against both the taker and him who ordered the taking: (*ib.* 152.) Against whom.

547. *In what cases*—The remedy by replevin is applicable to all cases of unlawful taking of goods. If, however, the goods have been taken by virtue of an execution issuing out of a Court of competent jurisdiction, or in order to a condemnation under the revenue laws, or for a duty to the Crown, replevin will not lie: (Com. Dig. Repl.; *George* v. *Chambers,* 11 M. & W. 149; *Cawthorne* v. *Camp,* 1 Aust. 212; *Rex* v. *Oliver,* Bunb. 14.) In what cases.

548. *For what.*—It is a general rule that whatsoever may be distrained may also be replevied: (1 Swanst. R. 296.) But neither money nor title deeds, nor things annexed to the freehold, excepting growing crops, can be subject to replevin: (see Bac. Abr. Repl. F.) For what.

549. *How to obtain a Replevin.*—Before the statute of Marlbridge, 52 Hen. 3, c. 21, the mode of proceeding How to obtain a replevin.

to obtain a replevin was by suing a writ of *replegiari facias* out of Chancery; but, by that statute, the Sheriff is directed, immediately upon complaint being made to him, and without such writ, to proceed to replevy the goods.

Bond must be taken.

It is, however, provided by 13 Edw. 1, c. 2, that the Sheriff shall, before he delivers the goods, take pledges from the plaintiff, not only to prosecute his suit, but also to return the cattle or goods, if a return be adjudged. And by 11 Geo. 2, c. 19, s. 23, it is enacted that in every replevin of a distress for rent, the Sheriff or his deputy shall take from the plaintiff, and two responsible persons as sureties, a bond in double the value of the goods distrained (to be ascertained on oath of one witness), conditioned for appearing at the next County Court, and prosecuting the suit with effect and without delay, and for a return of the goods, if a return should be awarded.

REPLEVIN BOND.

Form of replevin bond.

Know all men by these presents, That we of in the of and of in the are jointly and severally held and firmly bound to Esquire, Sheriff of the county of in the sum of of lawful money of the United Kingdom of Great Britain and Ireland, current in England, to be paid to the said Sheriff, or his certain attorney, heirs, executors, administrators or assigns; for which payment, to be well and truly made, we bind ourselves, and each and every of us, in the whole our and each and every of our heirs, executors and administrators, firmly by these presents.

Sealed with our seals. Dated this day of in the year of our Lord one thousand eight hundred and forty-

The condition of this obligation is such that if the above bounden do on or before the day of enter a plaint in the County Court of holden at and do prosecute his suit with effect and without delay against for the taking and unjustly detaining of his cattle, goods, and chattels, to wit, [here insert the particulars] *and do make return of the said cattle, goods, and chattels, if a return thereof shall be adjudged, then this present obligation shall be void and of none effect, or else to be and remain in full force and virtue.*

Sealed and delivered in the presence of

The Court must be one of the County Courts, and a bond conditioned for the party replevying to appear at the ancient County Court is not sufficient since the passing of the new County Courts Act: (*Edmonds* v. *Challis*, C. B. 2 C. C. Chron. 142.)

WARRANT TO REPLEVY.

to wit. }

Form of warrant to replevy.

Esquire, Sheriff of the county aforesaid, to the Bailiff of the hundred in the said county, and to John Doe and Richard Roe, my Bailiffs, and to every of them jointly and severally, greeting. Forasmuch as A. B. [insert the name of the person distrained on] *hath found me sufficient security as well for prosecuting his suit with effect against C. D.* [name of person who distrained] *for taking and unjustly detaining his cattle, goods, and chattels, to wit,* [here set out the particulars thereof] *which the said hath taken and unjustly detains, as it is said, as also for making return thereof, if return thereof shall be adjudged; therefore, on behalf of the said I command you and every of you, jointly and severally, that without delay you replevy and cause to be delivered to the said his said cattle, goods and chattels, and that you immediately summon the said to appear at the County Court of to be holden at on the day of to answer the said in the plea aforesaid; and in what manner you shall have executed this precept, certify to me at my next County Court, to be holden at in and for the said county, on the day of next.*

Given under the seal of my office, this day of in the year of our Lord one thousand eight hundred and forty.

550. *Replevin must be made before the Distress is sold.*—The replevin must be made before the sale of the goods, which, in cases of distress for rent, may be at any time after the expiration of five days from the time of the distress: (*Jacob* v. *King*, 5 Taunt. 451.) Replevin must be made before the distress is sold.

551. *Capias ad Withernam.*—If the goods have been eloigned or carried to places unknown, or out of the county, the Sheriff may issue precepts in the nature of *alias* and *pluries* writs, and if the officer returns an eloignment, he may issue a *capias in withernam*, by virtue of which, goods and chattels of the Capias ad withernam

BOOK VII. REPLEVIN.

defendant, to the value of those taken by him, may be seized and delivered to the plaintiff, which the plaintiff is entitled to detain in pledge and use: (Wilkinson Rep. 20; Fitz. N. B. 74.) If, however, the defendant comes and pleads that he did not take the goods, or claims property in the goods first distrained, he will be entitled to a return of the goods taken under the *capias ad withernam:* (1 Ld. Raym. 614.)

Proceedings in court.

552. *Proceedings in Court.*—These are regulated by the statute as follows:—

Section 119.

Actions of replevin may be brought without writ.

Sect. 119. And be it declared and enacted, that all actions of replevin in cases of distress for rent in arrear or damage faisant which shall be brought in the County Court shall be brought without writ in a Court held under this Act.

Plaint.

553. *Plaint.*—The entry of the plaint is regulated by the statute and by the rules, as follows:—

Section 120.

Plaints, where to be entered.

Sect. 120. And be it enacted, that in every such action of replevin the plaint shall be entered in the Court holden under this Act for the district wherein the distress was taken.

Rule 24.

Plaint must contain a statement of particulars.

Rule 24. Where any cattle, goods, or chattels, taken as a distress for rent in arrear, or damage feasant, shall have been replevied by the sheriff, the party at whose instance such replevin shall have been made, shall enter his plaint in the Court held under the authority of this Act, for the district within which such distress may have been made.

Rule 25.

Rule 25. On entering a plaint in replevin, the plaintiff must specify and describe in a statement of particulars, the cattle, or the several goods and chattels taken under the distress, and of the taking of which he complains.

The following may be the

FORM OF PARTICULARS.

No.

In the County Court of *at*

Between *A. B., Plaintiff,* *and* *C. D., Defendant.*

Form of particulars.

The following are the particulars of the cattle [or as the case may be] *of A. B., taken under a distress for rent* [or *damage*

feasant] *by C. D., at in the County of and within the district of this Court.* Book VII. REPLEVIN.

[Here enumerate the goods, chattels, &c. taken.]

Dated this day of

A. B., Plaintiff.

554. *Summons.*—The form of the summons is the same as in ordinary cases, and the statement of the cause of action may be thus: Summons.

In an action of Tort.—*For the taking and seizing as a distress, and wrongfully detaining the goods and chattels of the plaintiff (the particulars whereof are hereunto annexed) whereby the plaintiff hath been injured and sustained damage to the amount of* 20*l.*, *&c.*

555. *Hearing and Judgment.*—These are provided for by the 26th Rule, thus:

Rule 26. Hearing and Judgment.

Rule 26. All actions of replevin in cases of distress for rent in arrear, or damage feasant, shall be tried in a summary way as other actions in the Courts held under the authority of this Act, and the judgment therein, in ordinary cases, whether for plaintiff or defendant, shall be according to the forms in the schedule, or to the like effect.

The following are forms of

JUDGMENT FOR PLAINTIFF.

No.

In the County Court of at

(Seal.)

Between { *A. B., Plaintiff, and C. D., Defendant.* }

Form of judgment for plaintiff.

Upon hearing this cause at a Court holden at on the day of it is adjudged that the said plaintiff do recover against the said defendant the sum of £ for his debt [or *damages by him sustained*], *together with the costs of suit, amounting to the sum of £ : and it is ordered that the said defendant do pay the same to the Clerk of the Court at his office in on or before the day of*

Given under the seal of the Court, this day of 18 .

By the Court,

Clerk.

Attendance at the office from ten till four o'clock.

JUDGMENT FOR DEFENDANT.

No.

In the County Court of *at*

(Seal.)

Between { *A. B., Plaintiff,* *and* *C. D., Defendant.* }

Form of judgment for defendant.

Upon hearing this action of replevin at a Court holden at *on the* *day of* *it is adjudged that the said plaintiff do return to the said defendant the cattle* [or *the goods or chattels*, as the case may be, stating the particulars thereof] *forthwith* [or as the case may be]; *and that the said defendant do recover against the said plaintiff the costs of suit, amounting to the sum of £* ; *and it is further ordered, that the said defendant do pay the same to the Clerk of the Court, at his office at* *on or before the* *day of*

Given under the seal of the Court, this *day of* 18 .

By the Court,

Clerk.

Office hours from ten till four.

WARRANT TO HIGH BAILIFF FOR A RETURN.

No.

In the County Court of *at*

(Seal.)

Between { *A. B., Plaintiff,* *and* *C. D., Defendant.* }

Form of warrant to high bailiff for a return.

Upon hearing this action of replevin at a Court holden at *on the* *day of* *it was adjudged that the said plaintiff do return to the said defendant the cattle* [or *the goods or chattels*, as the case may be, stating the particulars thereof] *forthwith* [or as the case may be;] *and whereas the said plaintiff has not returned to the said defendant the cattle* [or *the said goods and chattels*], *pursuant to the said judgment: these are therefore to require and order that without delay you cause the cattle* [or *goods and chattels aforesaid*] *to be returned to the said defendant.*

Given under the seal of the Court, this *day of* 18 .

By the Court,

Clerk of the said Court.

To *High Bailiff of the said Court, and the other Bailiffs thereof.*

Removal of actions.

556. *Removal of Actions.*—All actions of replevin in cases of distress for rent in arrear, or damage *feasant*, may be commenced in the County Court. If the rent or damage, in respect of which the distress has been made, does not exceed 20*l.*, and no question of title arises, the Court has exclusive jurisdiction, not only to entertain the plaint, but also to proceed therein to judgment and execution. And though the amount should exceed 20*l.*, the authority of the Court is not thereby ousted, and if both parties consent, the judge may proceed therein, and his decision will be valid. If however, either party shall declare to the Court that the title to any corporeal or incorporeal hereditaments, or any toll, market, fair, or franchise is in question, or that the rent or damage in respect of which the distress shall have been taken is more than 20*l.*, and will give security as directed by the 121st section, the jurisdiction of the Court will be thereby determined, and the plaint must be removed to a superior tribunal. The cases decided on the construction of the 58th section, as to what is a sufficient claim of title to oust the jurisdiction of the Court, do not apply to this section, as the words are different. In the former section the words are "shall be in question," and there must have been some positive proof that title was actually in question in order to determine the authority of the Judge. But to entitle either party to remove a plaint under the 121st section it will be sufficient for him to *declare* that title is in question, and bind himself to prove his assertion in a Superior Court. Either party may, therefore, at his own risk, remove any plaint in replevin from the County Court by a simple declaration without further proof. The section is as follows:

Section 121. How actions of replevin may be removed.

Sect. 121. And be it enacted, that in case either party to any such action of replevin shall declare to the Court in which such action shall be brought that the title to any corporeal or incorporeal hereditament, or to any toll, market, fair or franchise, is in question, or that the rent or damage in respect of which the distress shall have been taken is more than the sum of twenty pounds, and shall become bound, with two sufficient sureties, to be approved by the Clerk of the Court, in such sums as to the Judge shall seem reasonable, regard being had to the nature of the claim, and the alleged value or amount of the

BOOK VII. REPLEVIN.

property in dispute, or of the rent or damage, to prosecute the suit with effect and without delay, and to prove before the Court by which such suit shall be tried that such title as aforesaid is in dispute between the parties, or that there was ground for believing that the said rent or damage was more than twenty pounds, then, and not otherwise, the action may be removed before any Court competent to try the same in such a manner as hath been accustomed.

The following may be the form of the

BOND.

No.

In the County Court of holden at .

(Seal.)

Between { *A. B., Plaintiff,* *and* *C. D., Defendant.* }

Form of bond.

Know all men by these presents, that we the above-named of in the of and of in the of are jointly and severally held and firmly bound to the above-named [*plaintiff* or *defendant*, as the case may be] *in the sum of of lawful money of the United Kingdom of Great Britain and Ireland current in England to be paid to the said* [*plaintiff* or *defendant* as the case may be] *or his certain attorney, executors, administrators or assigns, for which payment, to be well and truly made, we bind ourselves, and each and every of us, in the whole our and each and every of our heirs, executors and administrators firmly by these presents, sealed with our seals. Dated this day of in the year of Our Lord one thousand eight hundred and forty- ; And whereas the above-named plaintiff hath brought an action of replevin against the above-named defendant in the said Court of for the taking and unjustly detaining of his cattle, goods, and chattels, for a distress for* [*rent* or *damage feasant;*] *And whereas the said hath declared to the said Court, being the said Court in which such action has been so brought as aforesaid, that* [*The title to certain corporeal* or *incorporeal hereditament*, or *toll, market, fair,* or *franchise*, as the case may be, and stating the particulars thereof, or *the rent*, or *damage in respect*

of which such distress has been taken as aforesaid, is more than the sum of 20l.] Now the condition of this obligation is such that if the above-bounden do on or before the day of remove into Her Majesty's Court of [Queen's Bench or *Common Pleas] the said suit in replevin for the taking and unjustly detaining of the said cattle, goods, and chattels, and do prosecute the said suit with effect and without delay, and do prove before the Court by which such suit shall be tried that [such title as aforesaid is in dispute between the said parties;* or, as the case may be, *there is ground for believing that the said rent or damage is more than 20l.] then this present obligation shall be void and of none effect, or else to be and remain in full force and virtue.*

Approved by the Judge of the said Court.

Clerk of the said Court.

Sealed and delivered under the seal of the said Court, in the presence of

It seems that the effect of the declaration is simply to entitle the party making it to remove the plaint, and it does not of itself put an end to the suit in the Court below, or even entitle the Judge to strike out the plaint: (*Tubby* v. *Stanhope*, 1 Cox & Macrae, 105, C. B.)

Jurisdiction of old County Court.

The ancient County Court had jurisdiction to entertain actions of replevin to any amount (4 Inst. 266), and such actions, if not removed by either party, might have been there heard and determined. If, however, any right to freehold came in question, or ancient demesne was pleaded, or if it appeared that the taking was in right of the Crown, the Sheriff could proceed no further, and it became his duty to remove the proceedings to a Superior Court: (Co. Litt. 145; Bro. Abr. Repl.; Bac. Abr. Rep. E. 4.)

Section 119 enacts generally, that all actions of replevin, &c., which shall be brought in the County Court, shall be brought without writ in a Court holden under this Act. Every plaint, therefore, in replevin, in cases of distress for rent or damage *feasant*, that might have been entered in the ancient County Court, may now be brought in the new County Court, and we have seen that, as far as regarded the *commencement* of the action, the authority of the ancient County Court was unlimited.

BOOK VII. REPLEVIN.

What, then, are the limits of the jurisdiction of the new Courts? It has been held that the proviso of section 58 does not apply to actions of replevin, per Lord Denman, C. J. in *Re The County Court of Lancashire* (1 Cox & Mac. 170.) We must, therefore, look to the 121st section for such limits. That section enacts, that no action of replevin can be removed otherwise than is therein provided; unless, therefore, the terms of that section are complied with, the Court below must proceed with the action, though the rent or damage, in respect of which the distress has been taken, exceed 20*l.*, and the jurisdiction of the Court will only be ousted by such a claim of title, or the like, as would have deprived the ancient County Court of jurisdiction.

Formerly, actions of replevin were removable to a Superior Court, in every instance, by the plaintiff at pleasure, and by the defendant upon reasonable cause shown: (F. N. B. 69, M., 70, B.) But such actions brought in the new County Courts can only be removed on the conditions specified by the 121st section.

Certiorari.

The new County Court being a Court of record, actions of replevin as well as other proceedings in that Court, should be removed by *certiorari*: (Wilk. Rep. 26; Chitty's Arch. Pr. 989, 8th ed.) And the writ of *recordari facias loquelam* is only applicable to proceedings in Courts not of record: (*ib.*) As to the proceedings to obtain a *certiorari*, see *ante*, p. 349.

The application should, in the first instance, be made to a Judge at chambers, who may refer it to the Court if he thinks proper: (*Bowen* v. *Evans*, 1 C. C. Chron. 378, Exch.)

Proceedings if plaintiff makes default.

557. *Proceedings if Plaintiff makes Default.*—If the plaintiff makes default in any part of the proceedings, or does not prosecute the action according to the terms of the bail-bond, the defendant may take an assignment of the bond from the Sheriff, and proceed thereon against the plaintiff and his pledges: (Chitty's Arch. Pr. 987, 8th ed.)

BOOK VIII.

RECOVERY OF TENEMENTS.

I. The Jurisdiction of the Court.

This is specially given by sect. 122 of the County Courts Act, as follows:—

Sect. 122. And be it enacted, that when and so soon as the term and interest of the tenant of any house, land, or other corporeal hereditament, where the value of the premises or the rent payable in respect of such tenancy did not exceed the sum of fifty pounds by the year, and upon which no fine shall have been paid, shall have ended, or shall have been duly determined by a legal notice to quit, and such tenant, or, if such tenant do not actually occupy the premises, or occupy only a part thereof, any person by whom the same or any part thereof shall be then actually occupied, shall neglect or refuse to quit and deliver up possession of the premises, or of such part thereof respectively, it shall be lawful for the landlord or his agent to enter a plaint in the County Court to be holden under this Act, and thereupon a summons shall issue to the person so neglecting or refusing.

Section 122. Possession of small tenements may be recovered by plaint in county court.

From the above enactment it appears that the following are conditions precedent to the Court having jurisdiction:

1. *The Relation of Landlord and Tenant must exist between the Plaintiff and Defendant.*—The term "landlord" shall be understood to mean the person entitled to the immediate reversion of the lands, or if the property be holden in joint tenancy, coparcenary, or tenancy in common, shall be understood to mean any one of the persons entitled to such reversion: (sect. 142.)

The relation of landlord and tenant must exist between the plaintiff and defendant.

In order to give jurisdiction under this section, there must be the ordinary relation of landlord and tenant, and a mere constructive tenancy is not sufficient. This was held by PATTESON, J. in the case of *Jones* v. *Owen* (1 Cox & Macrae, 176.) That was a rule for a prohibition to restrain the Judge of the Caernarvonshire Court from further proceeding in the case on the ground that there was no tenancy proved to exist between the parties beyond what was to be implied from the relationship of mortgagor and mortgagee. PATTESON, J., in delivering judgment said, "This is clearly not within the Act, which obviously refers to cases between landlord and tenant. The section contemplates the ordinary relationship of landlord and tenant, and not that of mortgagor and mortgagee. If there existed any such agreement as that contended for, then there should have been a notice to quit. The County Court, therefore, had no jurisdiction whatever."

The annual value or the rent (no fine having been paid) must not exceed fifty pounds by the year.

2. *The annual value or the rent* (*no fine having been paid*) *must not exceed fifty pounds by the year.*—If either the annual value or the rent be under 50*l.* the Court has jurisdiction. In the case of *Fearon* v. *Norval* (1 Cox & Macrae, 127), an application was made for a prohibition, on the ground that the value of the premises exceeded 50*l.*, though the rent payable in respect of the tenancy was under that amount. But PATTESON, J. discharged the rule, and said, "there is no pretence for saying, if the rent does not exceed 50*l.* per annum and there is no fine, that it is not within the section, even though the value may be a thousand pounds. I am quite clear on that point."

The tenancy must have ended, or have been duly determined by a legal notice to quit.

Fearon v. *Norval*.

3. *The tenancy must have ended, or have been duly determined by a legal notice to quit.*—ERLE, J., in the case of *Fearon* v. *Norval* (1 Cox & Macrae, 127), ruled that the question whether the tenancy had been properly determined was one for the final decision of the County Court Judge; but PATTESON, J., in the case of *Jones* v. *Owen* (1 Cox & Macrae, 176), intimated a contrary opinion, and it is submitted that the view taken by PATTESON, J. is the correct one. If, looking at the 122nd section, we ask *when is the landlord entitled to enter a plaint?* The answer which must suggest itself to every one is, *when and so soon as the term and interest of the tenant of any house, &c. shall have been ended, or shall have been duly determined by a*

legal notice to quit. The landlord, therefore, has no right, until that happens, to enter his plaint, and if the landlord cannot enter his plaint the Judge cannot entertain it. From this it follows, that unless there has been a determination of the tenancy, the Judge has no power to enter upon the inquiry, properly speaking. All he can do is to examine into the facts and see whether or not he has jurisdiction, and his decision on that point may be reviewed by the Superior Courts: (*Lilley* v. *Harvey*, 1 Cox & Macrae, 115.) *Lilley* v. *Harvey.*

4. *There must have been a neglect or refusal to deliver up possession by the tenant or some person occupying the premises for him.*

5. *The premises sought to be recovered must be situated within the jurisdiction of the Court.*

This sufficiently appears from the judgment of WIGHTMAN, J., in the case of *Ellis* v. *Peachy* (2 C. C. Chron. 117, Q. B.), which is as follows: "Upon a motion for a prohibition, it appeared that the defendant resided within the jurisdiction of the Hertford County Court, but that the tenement of which possession was sought was situated out of the jurisdiction, and that a judgment had been given for a warrant to the Bailiff of the Court to deliver possession. As the Bailiff has no power to execute this warrant out of his own district, I am of opinion that the rule for a prohibition must be made absolute. The 122nd section authorizes the Judge to issue a warrant to any Bailiff of the Court to give possession. A warrant under this section would have no force beyond the district of the Court. With respect to warrants against the goods of a person, there is a power by section 104, to transmit them to the High Bailiff of other Courts; but no such power is given with respect to warrants for possession of tenements. It is not necessary to decide that the issue of a summons ought to be prohibited; but it is clear, that it is almost useless to proceed to judgment in a district where effective execution of such judgment cannot be had." *Ellis* v. *Peachy.*

558. *Plaint.*—In the cases above mentioned, "it shall be lawful for the landlord or his agent to enter a plaint in the County Court to be holden under this act, and thereupon a summons shall issue to the person so neglecting or refusing." Plaint.

BOOK VIII. RECOVERY OF TENEMENTS.

Agent.

The word "agent," shall be understood to mean any person usually employed by the landlord in the letting of lands, or in the collection of the rents thereof, or specially authorized to act in any particular manner by writing under the hand of such landlord.

The following is the form of

SUMMONS TO A TENANT HOLDING OVER.

No.

In the County Court of at

(Seal.)

Between { *A. B., Plaintiff,* *against* *C. D., Defendant.* }

Summons to a tenant holding over.

You are hereby summoned to appear at a County Court to be holden at on the day of at the hour of in the forenoon, to answer to the above-named plaintiff, wherefore you neglect or refuse to quit and deliver up to him possession of a certain [*messuage with appurtenances* or part *of a house, &c.,* as the case may be] *situate at* . *And take notice, if you do not appear at the said Court, and show cause why you do not quit and deliver up possession as aforesaid, you may, by order of the Court, be turned out of the possession held by you.*

Given under the seal of the Court, this day of 18 .

Clerk of the said Court.

To the above-named defendant.

559. *Service of Summons.*—This is provided for by sect. 123 as follows :—

Section 123.

The manner in which such summons shall be served.

Sect. 123. And be it enacted, that such summons as last aforesaid may be served either personally or by leaving the same with some person being in and apparently residing at the place of abode of the person or persons so holding over as aforesaid; provided that if the person or persons so holding over, or any or either of them, cannot be found, and the place of abode of such person or persons shall either not be known, or admission thereto cannot be obtained for serving such summons, the posting of the said summons on some conspicuous part of the premises so held over shall be deemed to be good service upon such person or persons respectively.

560. *Hearing and Judgment.*—This is provided for by section 122, as follows :—

Hearing and Judgment. *Section* 122.

Sect. 122. If the tenant or occupier shall not thereupon appear at the time and place appointed, and show cause to the contrary, and shall still neglect or refuse to deliver up possession of the premises, or of such part thereof of which he is then in possession, to the said landlord or his agent, it shall be lawful for such landlord or agent to give to the Court proof of the holding, and of the end or other determination of the tenancy, with the time or manner thereof, and, where the title of the landlord has accrued since the letting of the premises, the right by which he claims the possession; and upon proof of service of the summons, and of the neglect or refusal of the tenant or occupier, as the case may be, it shall be lawful for the Judge to issue a warrant under the seal of the Court to any Bailiff of the Court, requiring and authorizing him, within a period to be therein named, not less than seven or more than ten clear days from the date of such warrant, to give possession of the premises to such landlord or agent; and such warrant shall be a sufficient warrant to the said Bailiff to enter upon the premises, with such such assistants as he shall deem necessary, and to give possession accordingly.

If tenant, &c. neglect to appear, or refuse to give possession, judge may, on proof of service of summons, issue a warrant to enforce the same.

The warrant is to issue only in case "the tenant or occupier shall not appear at the time and place appointed and show cause to the contrary." It was contended, in the case of *Fearon* v. *Norval* (1 Cox & Macrae, 127), that it was sufficient to show *some* cause, whether good or bad, but ERLE, J. held, that it must be such cause as amounts, in the opinion of the Judge, to a defence. "The words of the statute," said his lordship, "are, 'If the tenant or occupier shall not thereupon appear, and show cause to the contrary,' and, in my opinion, those words require the tenant to show such cause as constitutes, in the opinion of the Judge, a defence." The following is the form of

Fearon v. *Norval.*

JUDGMENT FOR THE RECOVERY OF TENEMENT.

No.

In the County Court of *at*

(Seal.)

Between { *A. B., Plaintiff,* *and* *C. D., Defendant.* }

Upon the hearing of this cause at a Court holden at *on*

Judgment for

the recovery of tenement.

the day of it is adjudged, that the said plaintiff do recover against the said defendant, possession of a certain house [or *land* or *part of a certain house*] *at together with the costs of suit, amounting to the sum of £ , and it is ordered that the said defendant do forthwith quit and deliver up possession of the said house* [or, *&c.*] *to the said plaintiff; and that a warrant do forthwith issue to enforce this adjudication, and to require and authorize the Bailiff of the said Court to give possession of the said house* [or, *&c.*] *to the said plaintiff, within days from the date of such warrant; and it is further ordered, that the said defendant do pay the said sum of £ for the said plaintiff's costs, to the Clerk of this Court, at his office in , on or before the day of .*

Given under the seal of the Court, this day of 18 .

By the Court,

Clerk.

Office hours from ten till four.

The order must be for the defendant to quit the premises forthwith, and the warrant must be executed within a period to be therein named, not less than seven, nor more than ten, clear days, from the date of the warrant. If the judgment or warrant direct possession to be delivered at a period which is more than ten clear days after the trial, the judgment and all the subsequent proceedings are altogether void, and a new plaint may be entered: (*Fearon* v. *Norval*, 1 Cox & Macrae, 176)

The following is the form of

Warrant for the Delivery of Possession and Execution for Costs.

No.

In the County Court of at

(Seal.) *Between* { *A. B., Plaintiff, and C. D., Defendant.*

Warrant for delivery of possession and execution for costs.

Whereas upon the hearing of this cause at a Court holden at on the day of it was adjudged, that the said plaintiff do recover against the said defendant, possession of a certain [*house*, or *land*, or *part of a certain house*, as in the summons] *at together with the costs of*

suit, amounting to the sum of £ , and it was ordered that the said defendant do forthwith quit and deliver up possession of the said to the said plaintiff, and pay the said sum of £ for the said plaintiff's costs, to the Clerk of this Court, at his office in on or before the day of And whereas the said defendant hath not quitted and delivered up possession of the said to the said plaintiff, nor paid the said sum of £ for the said plaintiff's costs, to the Clerk of this Court. These are therefore to require and order you to give possession of the said to the said plaintiff, within days from the date hereof. And these are therefore further to require and order you forthwith to make and levy, by distress and sale of the goods and chattels of the said defendant, wherever they may be found within the district of this Court (excepting the wearing apparel and bedding of the said defendant or his family, and the tools and implements of his trade, if any, to the value of five pounds), the said sum of £ and also the costs of this warrant and execution; and also to seize and take any money or bank-notes (whether of the Bank of England or any other bank) and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money, of the said defendant which may be there found, or such part or so much thereof as may be sufficient for the satisfying of this execution, and the costs of making and executing the same.

Given under the seal of the Court, this day of 18 .

By the Court,

Clerk.

To the High Bailiff of the said Court and the other Bailiffs thereof.

	£			
Costs	£			
Execution				

Notice.—*The goods and chattels are not to be sold until after the end of five days next following the day on which they may have been taken, unless they be of a perishable nature, or at the request of the said defendant.*

"Provided, that entry upon any such warrant shall **Proviso.**

not be made on a Sunday, Good Friday, or Christmas-day, or at any time except between the hours of nine in the morning and four in the afternoon."

Evidence.

561. *Evidence.*—The plaintiff must prove,

1st. His title as landlord.

2nd. The tenancy of the defendant.

3rd. That the rent or annual value does not exceed 50*l.*

4th. The determination of the tenancy.

5th. The neglect or refusal of the defendant to deliver up possession.

6th. That the premises are situated within the jurisdiction of the Court.

7th. If the defendant does not appear, proof must be given of the service of the summons.

Where the landlord who actually let the premises brings the action, proof of the tenancy is sufficient evidence of title against the tenant to whom he let the premises, or any one claiming under him, for a tenant is estopped from disputing his landlord's title: (*Fleming* v. *Gooding,* 10 Bing. 549; *Taylor* v. *Needham,* 2 Taunt. 278; *Doe* v. *Mills,* 2 Ad. & E. 17.) A tenant may, however, show that, since the letting, his landlord's title has expired. He may show that the landlord, pending the tenancy, sold his interest (*Doe* v. *Watson,* 2 Stark. 230), or mortgaged the premises (*Doe* v. *Edwards,* 6 Car. & P. 208), or that he has become bankrupt (*Doe* v. *Brown et al.,* 7 A. & E. 447), or that he was but second mortgagee, and that the first mortgagee has claimed the rent, and compelled the defendant to pay it to him: (*Doe* v. *Barton et al.,* 9 L. J. 57, Q. B.)

Where the title of the landlord has accrued since the letting of the premises, the right by which he claims the possession must be proved. If the plaintiff claims title under the former landlord, it will be sufficient for him to prove his derivative title, as heir or assignee, or the like, and he need not prove the title of the former owner, as the tenant will be estopped from denying it: (*Rennie* v. *Robinson,* 1 Bing. 147.) The defendant may dispute the plaintiff's derivative title unless he has acknowledged him as landlord, as, for instance, by payment of rent: (*Phillips* v. *Pearce,* 5 B. & C. 433.) An acknowledgment, or even an attornment, is not conclusive

against the tenant, if it appears to have been made by mistake: (*Gravenor* v. *Woodhouse and others*, 1 Bing. 38; *Cornish and others* v. *Searell*, 8 B. & C. 471.)

562. *Indemnity to the Judge, Clerks, Bailiffs, and other officers.*—The statute has provided the following protection for officers in the performance of their duties.

Section 124.

Judges, Clerks, Bailiffs or other officers not liable to actions on account of proceedings taken.

Sect. 124. And be it enacted, that it shall not be lawful to bring any action or prosecution against the Judge or against the Clerk of the Court by whom such warrant as aforesaid shall have been issued, or against any Bailiff or other person by whom such warrant may be executed or summons affixed, for issuing such warrant, or executing the same respectively, or affixing such summons, by reason that the person by whom the same shall be sued out had not lawful right to the possession of the premises.

It would seem that this section protects the Judge and the officers of the Court only in cases where the Court has jurisdiction. If, therefore, the Judge proceeds on insufficient evidence of the facts necessary to give him jurisdiction, both he and the officers who execute the warrant will be liable to an action of trespass.

563. *How far the Landlord is protected.*—If the landlord has a lawful title to the possession of the premises, he will not be deemed a trespasser by reason of any irregularity, but the person aggrieved may recover damages for any special damage he may sustain in consequence of such irregularity.

Section 125.

Where landlord has a lawful title, he shall not be deemed a trespasser by reason of irregularity.

Sect. 125. And be it enacted, that where the landlord at the time of applying for such warrant as aforesaid had lawful right to the possession of the premises, or of the part thereof so held over as aforesaid, neither the said landlord nor his agent, nor any other person acting in his behalf, shall be deemed to be a trespasser by reason merely of any irregularity or informality in the mode of proceeding for obtaining possession under the authority of this Act, but the party aggrieved may, if he think fit,

bring an action on the case for such irregularity or informality, in which the damage alleged to be sustained thereby shall be specially laid, and may recover full satisfaction for such special damage, with costs of suit; provided that if the special damage so laid be not proved, the defendant shall be entitled to a verdict, and that if proved, but assessed by the jury at any sum not exceeding five shillings, the plaintiff shall recover no more costs than damages, unless the Judge before whom the trial shall have been holden shall certify that in his opinion full costs ought to be allowed.

564. *Liability of the Landlord when he has no right to the Possession—How Execution of Warrant of Possession may be stayed.*—If the plaintiff has not, at the time of suing out the warrant, lawful right to the possession, he will be deemed a trespasser, though the warrant be not put in force. And the defendant may bring his action to try such right, proceedings in the Court below being in the meantime stayed on security being given.

Section 126.

How execution of warrant of possession may be stayed.

Sect. 126. And be it enacted, that in every case in which the person by whom any such warrant shall be sued out of the County Court had not at the time of suing out the same lawful right to the possession of the premises, the suing out of any such warrant as last aforesaid shall be deemed a trespass by him against the tenant or occupier of the premises, although no entry shall be made by virtue of the warrant; and in case any such tenant or occupier will become bound, with two sufficient sureties, to be approved by the Clerk of the Court, in such sum as to the Judge shall seem reasonable, regard being had to the value of the premises, and to the probable cost of such action, to sue the person by whom such warrant was sued out with effect and without delay, and to pay all the costs of the proceeding in such action in case a verdict shall pass for the defendant, or the plaintiff shall discontinue or not prosecute his action or become nonsuit therein, execution upon the warrant shall be stayed until judgment shall have been given in such action of trespass; and if upon the trial of such action of trespass a verdict shall pass for the plaintiff, such verdict and judgment thereupon shall supersede the said warrant.

The following may be the form of a

BOND FOR STAYING WARRANT OF POSSESSION.

Bond for staying warrant of possession.

Know all men by these presents, that we C. D., E. F., G. H., [the defendant and two sureties] are jointly held and firmly bound to A., [the plaintiff,] in the sum of £ [insert the sum approved of by the judge,] *to be paid to the said A., or his certain attorney, executors, administrators, or assigns; for which payment, to be well and truly made, we bind ourselves and each of us, and each and every of our heirs, executors, and administrators, firmly by these presents.*

Dated this day of A.D., 18 .

The condition of this obligation is such that if the above bounden C. D., E. F., G. H., shall bring an action of trespass against the said A., with effect, and without delay, for suing out of the County Court a warrant of possession, bearing date the day of , and pay all costs of the proceeding in said action in case a verdict shall pass for the defendant, or the plaintiff shall discontinue or not prosecute his action, or become nonsuit therein; that then this present obligation shall be void and of none effect, or else to be and remain in full force and virtue.

C. D. (L. S.)
E. F. (L. S.)
G. H. (L. S.)

Approved of by me, A. B., judge of the County Court of .
(Seal of the Court.)

565. *Proceedings on the Bond.*—These are provided by the statute, thus :—

Section 127. Proceedings on the bond for staying warrant of possession, &c.

Sect. 127. And be it enacted, that every bond given on the removal of any action out of the County Court, or upon staying the execution of any such warrant of possession as aforesaid, or on moving for a new trial, or to set aside a verdict, judgment, or nonsuit, shall be made to the other party to the action at the costs of such other party, and shall be approved by the Judge, and attested under the seal of the Court; and if the bond so taken be forfeited, or if, upon the proceeding for securing which

such bond was given, the Judge before whom such proceeding shall be had shall not certify upon the record in Court that the condition of the bond hath been fulfilled, the party to whom the bond shall have been so made may bring an action of debt, and recover thereon: provided always, that the Court in which such action as last aforesaid shall be brought may by a rule of Court give such relief to the parties liable upon such bond as may be agreeable to justice and reason, and such rule shall have the nature and effect of a defeasance to such bond.

BOOK IX.

PROCEEDINGS FOR PENALTIES.

CAP. I.

PENALTIES.

The County Courts Act imposes various penalties for offences under it, and provides the manner of recovering them, thus:— Book IX. PROCEEDINGS FOR PENALTIES.

Cap. 1. Penalties.

Section 130.

Penalties and costs to be recovered before a justice, and levied by distress.

Sect. 130. And be it enacted, that all penalties, fines, and forfeitures by this Act inflicted or authorized to be imposed (the manner of recovering and applying whereof is not hereby otherwise particularly directed) shall, upon proof before any justice of the peace having jurisdiction within the county or place where the offender shall reside or be, or the offence shall be committed, either by the confession of the party offending, or by the oath of any credible witness, be levied, with the costs attending the summons and conviction, by distress and sale of the goods and chattels of the party offending, by warrant under the hand of any such justice; and the overplus (if any) after such penalties, fines, and forfeitures, and the charges of such distress and sale, are deducted, shall be returned, upon demand, unto the owner of such goods and chattels.

It will be observed that the application must be made, either,

1st. To a magistrate of the County wherein the offender resides;

Or, 2nd. To a magistrate of the County in which the offence was committed, and none other have jurisdiction.

BOOK IX. PROCEEDINGS FOR PENALTIES.

Cap. 1. Penalties.

566. *Mode of Proceeding.*—The process is as follows:—

Section 134.

Justices may proceed by summons in the recovery of penalties.

Sect. 134. And be it enacted, that in all cases in which by this Act any penalty or forfeiture is made recoverable before a Justice of the Peace, it shall be lawful for such Justice to summon before him the party complained against, and on such summons to hear and determine the matter of such complaint, and on proof of the offence to convict the offender, and to adjudge him to pay the penalty or forfeiture incurred, and to proceed to recover the same, although no information in writing shall have been exhibited before him; and all such proceedings by summons without information in writing shall be as valid and effectual to all intents and purposes as if an information in writing had been exhibited.

567. *Form of Conviction.*—This has been expressly enacted by the statute so as to prevent formal objections.

Section 135.

Form of conviction.

Sect. 135. And be it enacted, that in all cases where any conviction shall be had for any offence committed against this Act the form of conviction may be in the words or to the effect following; (that is to say,)

"Be it remembered, that on this day of in the year of our Lord *A. B.* is convicted before of Her Majesty's Justices of the Peace for the [*or* before a Judge appointed under an Act passed in the year of the reign of Her Majesty Queen Victoria, intituled *here insert the title of this Act,*] of having [*state the offence*]; and I [*or* we] the said do adjudge the said to forfeit and pay for the same the sum of or to be committed to for the space of . Given under hand and seal the day and year aforesaid."

Section 136.

Proceedings not invalid for want of form.

Sect. 136. And be it enacted, that no order, verdict, or judgment, or other proceeding, made concerning any of the matters aforesaid, shall be quashed or vacated for want of form.

Distress thereon.

568. *Distress thereon.*—After conviction a warrant is issued by the Justice authorizing the levying out of the goods and chattels of the offender the amount

of the penalties with the costs attending the summons and conviction: (section 130.)

The offender may, in default of security, be detained till return of warrant of distress.

Section 131.

In default of security, offender may be detained till return of warrant of distress.

Sect. 131. And be it enacted, that if any such penalties, fines, and forfeitures respectively shall not be paid forthwith upon conviction, it shall be lawful for such Justice to order the offender so convicted to be detained in safe custody until return can be conveniently made to such warrant of distress, unless such offender shall give sufficient security to the satisfaction of such Justice for his appearance before him on such day as shall be appointed for the return of such warrant of distress, such day not being more than eight days from the time of taking any such security, which security such Justice shall be empowered to take by way of recognizance or otherwise as to him shall seem fit.

The distress shall not be unlawful for want of form, either shall the party be deemed a trespasser *ab initio* on account of any irregularity.

Section 137.

Distress not unlawful for want of form.

Sect. 137. And be it enacted, that where any distress shall be made for any sum of money to be levied by virtue of an Act, the distress itself shall not be deemed unlawful, nor the party making the same be deemed a trespasser, on account of any defect or want of form in the information, summons, conviction, warrant of distress, or other proceeding relating thereto, nor shall the party distraining be deemed a trespasser from the beginning on account of any irregularity which shall afterwards be committed by the party so distraining, but the person aggrieved by such irregularity may recover full satisfaction for the special damage in an action upon the case.

569. *Commitment.*—And in default of distress the offender may be committed.

Section 132.

In default of distress, offender may be committed

Sect. 132. And be it enacted, that if upon return of such warrant it shall appear that no sufficient distress can be had thereupon, or in case it shall appear to the satisfaction of such Justice, either by confession of the offender or otherwise, that he hath not within the jurisdiction of such Justice sufficient goods and chattels whereon to levy all such penalties, forfeitures,

costs, and charges, such Justice may, at his discretion, without issuing any warrant of distress, commit the offender to the common gaol or house of correction for any time not exceeding three calendar months, unless such penalties, forfeitures, and fines, and all reasonable charges attending the recovery thereof, shall be sooner paid and satisfied.

As to the recovery of penalties before a Judge, see *ante*, Book IV.

CAP. II.

LIMITATION OF ACTIONS.

This is provided for by sect. 138, as follows:

Limitation of actions for proceedings in execution of this act.

Sect. 138. And for the protection of persons acting in the execution of this Act, be it enacted, that all actions and prosecutions to be commenced against any person for anything done in pursuance of this Act shall be laid and tried in the county where the fact was committed, and shall be commenced within three calendar months after the fact committed, and not afterwards, or otherwise; and notice in writing of such action, and of the cause thereof, shall be given to the defendant one calendar month at least before the commencement of the action; and no plaintiff shall recover in any such action if tender of sufficient amends shall have been made before such action brought, or if after action brought a sufficient sum of money shall have been paid into court, with costs, by or on behalf of the defendant.

In order to entitle a party to the protection afforded by this section, it is not necessary that the thing done should be authorized by the Act, but it is sufficient that the defendant had reasonable grounds for believing that he was acting in pursuance of the statute, and that he did the Act complained of *bonâ fide* in pursuance of such belief. Mere *bona fides*, however, is not sufficient to entitle any party to the protection of this section; but the act done must be of such a nature and description, that the party doing it may *reasonably have supposed* that the act gave him authority to do it: (see *Cann* v. *Clipperton*, 10 A. & E. 582; *Lidster* v. *Borrow*, 9 A. & E. 654; *Cook* v. *Leonard*, 6 B. & C. 355, 356.)

Section 139.

Provision for the protection of

Sect. 139. And be it enacted, that if any person shall bring any suit in any of Her Majesty's Superior Courts of Record in

Cap 2. *Limitation of actions.*

officers of the Court.

respect of any grievance committed by any Clerk, Bailiff, or officer of any Court holden under this Act, under colour or pretence of the process of the said Court, and the Jury upon the trial of the action shall not find greater damages for the plaintiff than the sum of twenty pounds, no costs shall be awarded to the plaintiff in such action unless the Judge shall certify in Court upon the back of the record that the action was fit to be brought in such Superior Court.

This section only applies to the Clerk, Bailiff, and officers of the Court, and does not apply either to the Judge or to the suitors. The object in view was, probably, to grant to the officers of the Court an extra amount of protection on account of their being bound to pay implicit obedience to the commands of the Judge. It is not, however, easy to reconcile the policy of this section with the provision of section 128. By the latter section it is provided, that in actions "where any officer of the County Court shall be party, except in respect of any claim to any goods and chattels taken in execution of the process of the Court, or the proceeds thereof, may be brought and determined in any such Superior Court, at the election of the party suing or proceeding, as if this Act had not been passed." What, then, is the object of this proviso? It is evidently to secure the plaintiff against all risk of a partial decision by a Judge who might be disposed to favour his own officers. But if there be any actions against officers in which the Judge would be more likely to be partial than others, they are those to which section 139 applies. That section, however, enacts that the plaintiff shall have no costs if he sues in a Superior Court. That the Judge has power to certify at the trial does not remedy the inconvenience, for it would require very strong circumstances indeed to induce a Judge of one of the Superior Courts to presume that any inferior Judge would act partially.

BOOK X

SUING IN FORMA PAUPERIS.

A point of very considerable importance in County Court practice was lately decided by the Court of Common Pleas in the case of *Chinn* (a pauper) v. *Buller* (14 L. T. 203.) It is that the Judges of the County Courts may allow parties to sue in *formâ pauperis*. As this case is the only authority on the subject we shall insert it here at length.

A. M. Skinner had obtained a rule calling upon the plaintiff, who had obtained 10*l.* damages in an action of debt, tried in this Court, to show cause why a suggestion should not be entered upon the roll to deprive him of costs, on the ground that he ought to have sued in the County Court.

G. Atkinson now showed cause.—The power to sue in *formâ pauperis* is given by stat. 11 Hen. 7, c. 12, but that statute applies only to proceedings by original writ, or by bill, and is confined, therefore, to proceedings in the Superior Courts. It may be said the County Court is now a Court of Record, but the act has made it such, subject to certain regulations. One of these is, that the Judges of the Superior Courts may make rules and orders, but they have made no orders in this matter. The County Courts Act clearly does not contemplate any person suing in those Courts who is unable to pay fees, for one of the clauses provides that every suitor shall pay the fees named in the schedule. Probably this was a *casus omissus.*

MAULE, J.—Would a person be allowed to sue *in forma pauperis* in the Superior Courts for less than 40*l.*? I should think not. I think the statute of Henry can only apply to persons who can properly sue in the Superior Courts.

G. Atkinson.—I can find no authority on the subject.

MAULE, J.—The 78th section of the County Courts Act, which provides that the Judges of the Superior Courts shall have power to make rules for regulating the practice of the County Courts, enacts, "and in any case not expressly provided for herein, or by the said rule, the general principles of practice in the Superior Courts of Common Law may be adopted and applied at the discretion of the Judges to actions and proceedings in their several Courts." This shows that the Judges of the Superior Courts might, if they had thought fit, have made regulations respecting persons suing in the County Courts *in formâ pauperis.* Then, as they have not done so the latter part of this section provides that the general principles of practice in the Superior Courts may be adopted at the discretion of the Judges—meaning thereby the Judges of the County Courts—in their several Courts. Now the practice of the Superior Courts is to exercise a discretionary power as to persons suing *in formâ pauperis,* and as no regulation has been made on the subject, that practice may clearly be adopted by the Judges of the County Courts.

WILDE, C. J.—If a pauper has a cause of action involving anything special in it, I apprehend he, like any one else, may still apply to the Superior Courts for leave to sue there, but otherwise, if any class of persons should go to the cheap Courts it is paupers, who are not to pay costs.

By the COURT, *Rule absolute.*

Who allowed to sue in *forma pauperis,* and in what cases.

570. ***Who allowed to sue in formâ pauperis, and in what cases.***—It is provided by 11 Hen. 7, c. 12, and 23 Hen. 8, c. 15, s. 2, that every poor person, who may have cause of action, shall have writs according to the nature of his case without paying for the sealing or writing the same; and that the Justices shall assign him Counsel and Attorney, who, together with the officers of the Court, shall act *gratis.* The party applying must, however, swear that he is not worth 5*l.*; excepting his wearing apparel, and the matter in question in the cause. And it has been held to be discretionary in the Judge to allow the indulgence or not: (Chitty's Arch. 1121.)

No defendant can obtain such order except in Chancery proceedings.

571. *When admitted.*—A party to the suit may be admitted to sue in *formâ pauperis* at any time during the continuance of the proceedings; but the order has no retrospective effect: (2 Chitty's Arch. 1121.)

When admitted

572. *How admitted.*—The party may be admitted either upon motion in Court or upon petition to the Judge. The motion or petition should be based upon an affidavit stating the cause of action and the grounds on which the party claims to be admitted. And in the Superior Court a certificate signed by counsel that the party has a good cause of action is required: (*ibid.*)

How admitted

573. *Effect of admission.*—The order of admission only extends to the cause in which it is granted, and it has no retrospective effect.

Effect of admission

From the time of admission the plaintiff may carry on all proceedings without being liable to pay costs either to the opposite party or to his own Attorney and Counsel (except costs out of pocket to his Attorney) and without paying any Court fees. On the other hand he will be entitled to costs from the defendant if he succeeds, and in the event of his recovering more than 5*l.* his Attorney and Counsel will be entitled to their costs.

574. *Proceedings in the cause.*—The proceedings are the same as in ordinary cases.

Proceedings in the cause.

575. *In what cases compelled to pay Costs or dispaupered.*—If it appears that the plaintiff has no meritorious cause of action, or that he has acted vexatiously, the Court may dispauper him; and since the New Rules a pauper plaintiff may be made to pay the costs of the day for not proceeding to trial: (see R. H. 2 W. 4. r. 10.)

In what cases compelled to pay costs or dispaupered.

BOOK XI.

FEES AND COSTS.

Book XI. Fees and Costs.

The costs of proceedings in the County Courts are to abide the event of the trial, but the Judge is empowered to make any special direction in respect thereto, that he may think best.

Section 88.

Costs to abide the event of the action.

Sect. 88. And be it enacted that all the costs of any action or proceeding in the Court, not herein otherwise provided for, shall be paid by or apportioned between the parties in such manner as the Judge shall think fit, and in default of any special direction shall abide the event of the action, and execution may issue for the recovery of any such costs in like manner as for any debt adjudged in the said Court.

The costs in the County Courts may be divided into two classes:

1st. Fees payable to the officers of the Court.
2nd. Counsel and Attorneys' charges, and expenses of witnesses.

The Court fees are settled by the schedule to the Act, and are set forth in page 587.

Fees under the extended Jurisdiction.—This is provided for by section 5 of the new statute 13 & 14 Vict. c. 61, as follows:—

13 & 14 Vict. c. 61, s. 5.

Fees to be taken according to schedule.

Sect. 5. And be it enacted, that there shall be payable on every proceeding in the Courts holden under the said Act of the tenth year of Her Majesty, to the Judges, Clerks, and High Bailiffs of the several Courts, in every case where the sum sought to be recovered shall exceed twenty pounds, such fees as are set down in the schedule marked D. to the said Act of the

tenth year of Her Majesty annexed as fees payable upon demands exceeding the sum of ten pounds; and the fees on every proceeding shall be paid in the first instance by the plaintiff or party on whose behalf such proceeding is to be had on or before such proceeding, and in default payment thereof shall be enforced by order of the Judge by such ways and means as any debt or damage ordered to be paid by the Court can be recovered; and the fees upon executions shall be paid into Court at the time of the issue of the warrant of execution, and shall be paid by the Clerk of the Court to the Bailiff upon the return of the warrant of execution, and not before: provided always, that it shall be lawful for one of Her Majesty's principal Secretaries of State, with the consent of the Commissioners of Her Majesty's Treasury, from time to time to regulate or vary, lessen or increase, the fees payable under this Act or the said recited Acts, or either of them, in such manner as to him shall seem fit: provided also, that all sums payable in the name of fees to such officers of the Court as shall be paid by salaries shall be paid from time to time to the treasurer of the Court, and shall be applied by such treasurer in the manner provided by the said Act of the tenth year of Her Majesty.

Power to Secretary of State, with consent of the Treasury, to alter fees.

Fees of Counsel and Attorney.—These fees are regulated by section 91 of the first Act, and section 6 of the Extension Act, and are as follows :

Fees of counsel and attorney.

In Covenant, Assumpsit and Debt.

	Counsel.			Attorney.		
	£.	s.	d.	£.	s.	d.
Under 2*l*.	0	0	0	0	0	0
Above 2*l*. and not exceeding 5*l*.	1	3	6	0	10	0
,, 5*l*. ,, ,, 20*l*.	1	3	6	0	15	0
,, 20*l*. ,, ,, 35*l*.	2	4	6	1	10	0
,, 35*l*. ,, ,, 50*l*.	2	4	6	2	0	0

In Trespass, or Trespass on the Case.

	Counsel.			Attorney.		
	£.	s.	d.	£.	s.	d.
Under 2*l*.	0	0	0	0	0	0
Above 2*l*. and not exceeding 5*l*.	1	3	6	0	10	0
,, 5*l*. ,, ,, 20*l*.	1	3	6	0	15	0
,, 20*l*. ,, ,, 50*l*.	2	4	6	2	0	0

Book XI. Fees and Costs.

But the Courts having decided that these fees are only for the conduct of the cause in Court, and not for the general business of the attorney in the getting up of a case, which they may charge to their client, the attorneys of Sheffield have proposed the following scale of fees for adoption by the profession generally in County Courts business; and as uniformity of charge is extremely desirable, we introduce it here in the hope that it may be observed by all our readers.

REPORT OF THE COMMITTEE

Appointed, at a meeting of solicitors practising in Sheffield, held at the Council Hall on the 18th of September, 1850, to frame a scale of charges, either by commission, or otherwise for business to be done in the County Court, and to submit the same to a general meeting of the profession for further consideration.

After examining the various arguments for and against a scale of charges by commission, it was deemed most advisable both for the interests and honour of the profession and for the pecuniary advantage of clients, that the principle of a commission or per centage ought not, under present circumstances, to be adopted. The committee, therefore, resolved to recommend, unanimously, that a scale of fees should be adopted for the practice of the County Court, and that the following schedule should be submitted to the consideration of the profession:—

General Costs.	Under 20*l* s.	d.	Under 35*l*. £	s.	d.	Under 50*l*. £	s.	d.
Letter before action	2	0	0	3	6	0	3	6
Application for Summons out of district	3	4	0	6	8	0	10	0
Instructions for Plaint, and drawing same	1	8	0	3	4	0	6	8
Attending to enter same	1	8	0	3	4	0	6	8
Drawing and two copies of Particulars of Demand, if under three folios	2	0	0	3	0	0	5	0

	Under 20*l.*		Under 35*l.*			Under 50*l.*		
	s.	*d.*	£	*s.*	*d.*	£	*s*	*d.*
If above three folios, 4*d.* per additional folio extra								
Attending searching whether Summons served	1	8	0	3	4	0	6	8
Attending bespeaking spas	1	8	0	3	4	0	6	8
Notice of intention to appear by Attorney, copies and service	1	0	0	2	0	0	3	0
Notice of trial by jury, copies and service	1	0	0	2	0	0	3	0
Notice to produce, copy and service	1	0	0	2	0	0	3	0
Examining witnesses, or minutes of evidence	3	4	0	6	8	0	10	0
Attending Court on trial	15	0	1	10	0	2	0	0
Attending every adjourned hearing	7	6	0	15	0	1	0	0
Attending searching books	1	8	0	3	4	0	6	8
Attending receiving money out of Court	1	8	0	3	4	0	6	8
Attending bespeaking execution, and other attendances, when necessary, each	1	8	0	3	4	0	6	8
WHERE COUNSEL EMPLOYED.								
Instructions for Brief	1	8	0	3	4	0	6	8
Drawing Brief and fair copy, 10*s.* per Brief sheet								
Attending Counsel	1	8	0	3	4	0	6	8
Attending consultation	3	4	0	6	8	0	10	0
Attending Court	10	0	0	15	0	1	1	0
CONFESSIONS AND STATEMENTS.								
Instructions for and drawing confession and fair copy, without terms. Sect. 8, c. 61 (13 & 14 Vict.)	3	4	0	6	8	0	10	0
The like with terms, sect. 9	5	0	0	10	0	0	15	0
Affidavit of signature and oath	3	0	0	5	0	0	7	6
Attending Court or Clerk therewith	1	8	0	3	4	0	6	8

Credit to be given to the client for the amount of costs paid by defendant by order of the Court.

The Committee did not consider it necessary to prepare specific charges in *recovery of tenements*, *replevin*, *interpleader*, and *trials by consent*, as the practitioner will readily adapt the above scale to the requirements of each special case. This remark is also applicable to the case of a defendant, the above scale containing, with a slight change, everything requisite for a defence.

The Committee has left the charge for journeys to distant Courts to the discretion of the practitioner.

With respect to appeals, the Committee did not consider that the question was within the jurisdiction of the County Courts, but of the Superior Courts at Westminster, whose taxing officers will regulate the costs.

REDUCTION OF FEES.

TREASURY ORDER, dated November 15th, 1850.

BY the act of last session extending the jurisdiction of County Courts, power was given to one of Her Majesty's Secretaries of State, with the concurrence of the Treasury, to remodel the fees payable by suitors. In pursuance of these powers, Sir George Grey has, with the assistance of the law officers of the Crown, arranged a new and reduced scale of fees, which came into operation on the 25th November. The following is the order:

BOOK XI. FEES AND COSTS.

Whereas by an act passed in the tenth year of Her present Majesty, intituled "An Act for the more easy Recovery of Small Debts and Demands in England," it was enacted that for raising a fund for providing a court-house and offices, and for paying off any moneys which might be borrowed as therein mentioned, and the interest due in respect thereof, the clerk of every court holden under the authority of that act, in which and while it should be necessary to raise such fund, should demand and receive from the plaintiff in any suit brought in that court the sum of sixpence when the debt or damage claimed should exceed twenty shillings and should not exceed forty shillings, and for every claim exceeding forty shillings one-twentieth part thereof, neglecting any sum less than sixpence in estimating such twentieth part, or such other sum in either case, not exceeding the rates thereinbefore mentioned, as one of Her Majesty's principal Secretaries of State, with the consent of the Commissioners of Her Majesty's Treasury, from time to time should order:

And whereas by an act passed in the fourteenth year of her present Majesty, intituled "An Act to extend the Act for the more easy Recovery of Small Debts and Demands in England, and to amend the same," it was enacted that the jurisdiction of the several courts holden or to be holden under the said act of the tenth year of Her Majesty should extend to the recovery of any debt, damage, or demand, not exceeding the sum of fifty pounds, and to all actions in respect thereof (save and except the several actions specified in the proviso in section fifty eight of the tenth year of Her Majesty), and that the several powers and provisions of the said act of the tenth year of Her Majesty, and of an act passed in the thirteenth year of Her Majesty, intituled "An Act to amend the Act for the more easy Recovery of Small Debts and Demands in England, and to abolish certain inferior Courts of Record," and all rules, orders, and regulations, which had been or might be made in pursuance of

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the said acts or either of them should extend to all debts, damages, and demands which might be sued for in the said courts or any of them not exceeding the sum of fifty pounds, and to all proceedings and judgments for the recovery of the same, or otherwise in relation thereto respectively, as fully and effectually, to all intents and purposes, as the same respectively were then or might be applicable to debts, damages, and demands within the jurisdiction of the said courts. And that that act and the said recited acts of the tenth and thirteenth years of Her Majesty should be read and construed as one act, as if the several provisions in the said last-mentioned acts contained, not inconsistent with the provisions of the said act of the fourteenth year of Her Majesty, had been therein repeated and re-enacted:

In pursuance of the powers given by the said recited acts, I, Sir George Grey, Baronet, one of Her Majesty's principal Secretaries of State, with the consent of Sir William Gibson Craig and Henry Rich, Commissioners of Her Majesty's Treasury, do hereby order, that on and after the 25th day of November, 1850, the clerk of every court holden under the provisions of the said recited acts, shall demand and receive from the plaintiff in every suit brought in that court, sixpence when the amount of the debt or damage claimed shall exceed twenty shillings and shall not exceed forty shillings, and when the amount of the debt or damage claimed shall exceed forty shillings and shall not exceed twenty pounds, one-thirtieth part thereof, and in estimating the sum to be demanded and received, every fraction of a pound in the amount claimed shall be treated and considered as an entire pound; and that when the amount of the debt or damage claimed shall exceed twenty pounds, the same sum shall be demanded and received as if the amount of the debt or damage claimed were twenty pounds only. And on and after the said 25th day of November, the sums directed to be demanded and received by the fifty-second section of the first recited act shall cease to be payable.

Dated this 15th day of November, 1850.

Whereas by an act passed in the tenth year of Her present Majesty, intituled, "An Act for the more easy Recovery of Small Debts and Demands in England," it was enacted that there should be payable on every proceeding in the courts holden under that act to the judges, clerks, and high bailiffs of the several courts by the said act established such fees as were set down in a schedule to that act annexed, or which would be set down in any schedule of fees reduced or altered under the power thereinafter contained for that purpose, and none other; and it was further enacted that it should be lawful for one of Her Majesty's principal Secretaries of State, with the consent of the Commissioners of Her Majesty's Treasury, to lessen the amount of the fees to be taken in the courts holden under that act in such a manner as to him should seem fit, and again to increase such fees, so that the scale of fees given in the schedule to the said act should not be in any case surpassed.

And whereas, by an act passed in the thirteenth year of Her

present Majesty, intituled "An Act to amend the Act for the more easy Recovery of Small Debts and Demands in England, and to abolish certain Inferior Courts of Records," it was enacted that it should be lawful for one of Her Majesty's principal Secretaries of State, with the consent of the Commissioners of Her Majesty's Treasury, from time to time to regulate or vary, lessen or increase, the fees or sums in the name of fees then payable, or which from time to time might be payable, on the several proceedings in the courts holden under the said act of the tenth year of Her Majesty, to the judges, clerks, and high bailiffs of such courts, and such fees or sums might be so regulated from time to time by way of per centage on the amount of the demand; and such Secretary of State, with such consent as aforesaid, might from time to time appoint, instead of all or any of the fees or sums in the name of fees then payable, or which might from time to time be payable as aforesaid, other fees or sums by way of per centage or otherwise, and to be payable on such proceedings under such last-mentioned act, as such Secretary of State, with such consent as aforesaid, might direct.

And whereas by an act passed in the fourteenth year of Her present Majesty, intituled *An Act to extend the Act for the more easy Recovery of Small Debts and Demands in England, and to amend the same,* it was enacted that there should be payable on every proceeding in the courts holden under the said act of the tenth year of Her Majesty, to the judges, clerks, and high bailiffs of the several courts, in every case where the sum sought to be recovered should exceed twenty pounds, such fees as were set down in the schedule to the said act of the tenth year of Her Majesty annexed, as fees payable upon demands exceeding the sum of ten pounds; and that it should be lawful for one of Her Majesty's principal Secretaries of State, with the consent of the Commissioners of Her Majesty's Treasury, from time to time to regulate or vary, lessen or increase, the fees payable under that act, or the said recited acts, or either of them, in such manner as to him should seem fit; and whereas, by the said last-mentioned act it was enacted that that act and the said acts of the tenth and thirteenth years of Her Majesty should be read and construed as one act, as if the several provisions in the said last-mentioned acts contained, not inconsistent with the provisions of the said act of the fourteenth year of Her Majesty, had been therein repeated and re-enacted.

In pursuance of the powers given by the said recited acts, I, Sir George Grey, Baronet, one of Her Majesty's principal Secretaries of State, with the consent of Sir William Gibson Craig, Baronet, and Henry Rich, two of the Commissioners of Her Majesty's Treasury, whose names are hereunto subscribed, do hereby order and appoint that on and after the 25th day of November, 1850, the fees, or sums in the name of fees, in the schedule to the said act of the tenth year of Her Majesty mentioned, shall cease to be payable, and that in lieu thereof the fees, or sums in the name of fees, mentioned in the

BOOK XI. FEES AND COSTS.

table following shall be payable on the proceedings in the courts holden under the provisions of the said acts of the tenth, thirteenth, and fourteenth years of Her Majesty respectively. And that the fees, or the sums in the name of fees, mentioned in the said table (with the exception of the fees called in the said table "high bailiff's fees"), shall in each court be appointed and divided as follows:—Nineteen-fortieth parts thereof to be the judge's fees, and to be applied as the judge's fees are now applicable; nineteen-fortieth parts thereof to be the clerk's fees, and to be applied as the clerk's fees are now applicable in such court; and two-fortieth parts thereof to be the high bailiff's fees, to be applied as the high bailiff's fees are now applicable in such court. And that the fees called "high bailiff's fees" in the said table shall be taken by the high bailiff for their own use.

TABLE OF FEES TO BE TAKEN IN THE COUNTY COURTS ESTABLISHED BY 9 AND 10 VICT. C. 95, ON AND AFTER THE 25TH DAY OF NOVEMBER, 1850.

N. B. In cases within the ordinary jurisdiction of the courts, the undermentioned poundage and fees are to be taken; but where the sum demanded is above twenty pounds, the poundage is to be taken on twenty pounds only. All fractions of a pound, for the purpose of calculating the poundage, shall be treated as an entire pound.

For every summons; sevenpence in the pound on the amount of the demand.

For every application for a summons out of the district; threepence in the pound on the amount of the demand. This sum to include every fee for such application.

NOTICE.—*No other fee whatever is to be taken on the entry of a plaint, except for service by the high bailiff, and for affidavit of service out of the district.*

For every hearing without a jury; twenty-six pence in the pound on the amount of the demand.

For every hearing with a jury; thirty-eight pence in the pound on the amount of the demand.

Judgments by consent under the 13th & 14th Vict. c. 61, ss. 8, 9, and judgments upon applications in the nature of *sci. fa.*, to be charged the same fee as on the hearing of a cause without a jury.

NOTICE.—*No other fee whatever is to be taken for the hearing or*

trial of a cause, except for the service of the order by the high bailiff.

For every subpœna (each witness); two shillings, without reference to the amount of the demand.

For entering and giving notice of a special defence; eighteenpence, without reference to the amount of the demand.

For any adjournment of a cause or other matter to another court, at the request of either party; threepence in the pound on the amount of the demand.

For paying money into or out of court, whether before or after judgment, on each payment not exceeding ten shillings, one penny; and on each payment above ten shillings, twopence in the pound on the amount of the payment.

For notice to be given, by prepaid post letter, to plaintiff, of every payment whatever made into court, twopence, without reference to the amount of the payment; out of this fee the postage of such letter is to be paid by the clerk.

For issuing any warrant, attachment, or execution; twopence in the pound on the amount for which such warrant, attachment, or execution issues.

For taking recognizance, bond, or security for costs; fourpence in the pound on the amount of the demand.

For inquiring into the sufficiency of sureties; sixpence in the pound on the amount of the demand.

For application for new trial, or to set aside proceedings; sixpence in the pound on the amount of the demand.

For every summons for commitment, under the 9th and 10th Vict. c. 95, s. 98; sixpence in the pound on the amount of the original demand then remaining due.

For every hearing of the matters mentioned in such summons for commitment; one shilling in the pound on the amount last aforesaid.

NOTICE.—*No other fees than the above to be taken, on any account whatever, except the high bailiff's fees for service. No application to the court is to be charged with a fee except those above mentioned. No increase of fees shall be made by reason of there being more than one plaintiff or defendant.*

Book XI.
Fees and Costs.

HIGH BAILIFF'S FEES.

For serving summons, order, or subpœna, within two miles of the court house; one penny in the pound on the amount of the demand, except for the service of a summons under the 9 & 10 Vict. c. 95, s. 98, when the poundage is to be calculated on the amount of the original demand then remaining due.

For such service, if beyond two miles, then extra for every additional mile; sixpence, without reference to the amount of the demand.

For affidavit of service of summons out of the jurisdiction; one shilling, without reference to the amount of the demand.

For execution of every warrant or attachment against the goods or body within two miles of the court house; one shilling in the pound on the amount for which such warrant or attachment issues.

For such execution, if beyond two miles then extra for every additional mile; sixpence, without reference to the amount for which such warrant or attachment issues.

For keeping possession of goods till sale, per day (including expense of removal, storage of goods, and all other expenses whatever) not exceeding five days; sixpence in the pound on the amount for which the execution issues. [This, however, does not apply to cases of interpleader in which the costs and expenses of possession are in the discretion of the judge.]

For carrying every delinquent to prison, including all expenses and assistants; one shilling per mile, without reference to the amount mentioned in the warrant.

For issuing warrant to clerk of another court; two shillings and sixpence, without reference to the amount mentioned in the warrant.

N. B.—Where the plaintiff recovers less than the amount of his claim, so as to reduce the scale of costs, the plaintiff to pay the difference.

The several fees payable on proceedings in replevin to be regulated on the above scale, by the amount distrained for, and on proceedings for the recovery of tenements, by the yearly rent or value

of the tenement sought to be recovered; but in neither case to exceed the fees payable on a demand of twenty pounds.

In cases of extraordinary jurisdiction, given to the court by the consent of parties to the trial of questions under the 13 & 14 Vict. c. 61, s. 17, the poundage shall be taken in every such case on the sum of fifty pounds.

In cases of interpleader, the summons is to be issued to the high bailiff gratis, and the poundage for the hearing is to be estimated on the value of the goods claimed, which, in case of dispute, is to be assessed by the judge. The costs, however, of the summons, estimated on the above-mentioned value, shall be included in the general costs, which may, in the discretion of the judge, be awarded at the hearing.

Dated this 15th day of November, 1850.

G. Grey,
One of Her Majesty's Principal Secretaries of State.

W. Gibson Craig,
H. Rich,
Commissioners of Her Majesty's Treasury.

A CONSOLIDATED

To be taken in the COUNTY COURTS pursuant to the

AMOUNT OF DEMAND.	SUMMONS. Judge and Clerk.	SUMMONS. General Fund.	SUMMONS. Bailiff. (1)	SUMMONS. TOTAL.	Paying Money in and out of Court. (2)	APPLICATION FOR SUMMONS OUT OF DISTRICT. Judge and Clerk.	APPLICATION FOR SUMMONS OUT OF DISTRICT. Bailiff. (1)	APPLICATION FOR SUMMONS OUT OF DISTRICT. TOTAL.
	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.		s. d.
Not exceeding .... 10s.	...	...	...	...	0 2			
Exceeding 10s., not exceeding £1	0 7	...	0 1	0 8	0 4	0 3	......	2 9
" £1 " 2	1 2	0 6	0 2	1 10	0 8	0 6	......	3 0
" 2 " 3	1 9	2 0	0 3	4 0	1 0	0 9	......	3 3
" 3 " 4	2 4	2 8	0 4	5 4	1 4	1 0	......	3 6
" 4 " 5	2 11	3 4	0 5	6 8	1 8	1 3	......	3 9
" 5 " 6	3 6	4 0	0 6	8 0	2 0	1 6	......	4 0
" 6 " 7	4 1	4 8	0 7	9 4	2 4	1 9	......	4 3
" 7 " 8	4 8	5 4	0 8	10 8	2 8	2 0	......	4 6
" 8 " 9	5 3	6 0	0 9	12 0	3 0	2 3	2s. 6d. in	4 9
" 9 " 10	5 10	6 8	0 10	13 4	3 4	2 6	each case, viz.—	5 0
" 10 " 11	6 5	7 4	0 11	14 8	3 8	2 9	Postage,	5 3
" 11 " 12	7 0	8 0	1 0	16 0	4 0	3 0	6d.	5 6
" 12 " 13	7 7	8 8	1 1	17 4	4 4	3 3	Affidavit	5 9
" 13 " 14	8 2	9 4	1 2	18 8	4 8	3 6	of service, 1s.	6 0
" 14 " 15	8 9	10 0	1 3	20 0	5 0	3 9	Paid for	6 3
" 15 " 16	9 4	10 8	1 4	21 4	5 4	4 0	Oath, 1s.	6 6
" 16 " 17	9 11	11 4	1 5	22 8	5 8	4 3	9 & 10 Vict. c. 95, s. 62.	6 9
" 17 " 18	10 6	12 0	1 6	24 0	6 0	4 6	......	7 0
" 18 " 19	11 1	12 8	1 7	25 4	6 4	4 9	......	7 3
" 19 " 20	11 8	13 4	1 8	26 8	6 8	5 0	......	7 6
" 20 " 50	11 8	13 4	1 8	26 8	6 8	5 0	......	7 6
Extraordinary Jurisdiction (13 & 14 Vict. c. 61, s. 17)	29 2	13 4	4 2	46 8	16 8	12 6	......	15 0

	s. d.
Every Subpoena—each Witness—exclusive of Bailiff's Poundage, *Column* No. 3, and Mileage, *Note* (1)	2 6
Entering and giving Notice of Special Defence	1 6

(1) Sixpence per Mile additional to be charged for every Mile beyond Two Miles from the Court House, without reference to the demand.

(2) One-half the Amount only payable on each Payment in *or* out of Court after the first; and this Scale to be regulated by the Amount paid in or out of Court, *and not by the Amount of Demand.*

(3) These Fees to be charged upon Judgments by consent, under 13 & 14 Vict. c. 61, ss. 8, 9, and Judgments, upon Applications in the nature of *sci. fa.*

(4) This does not apply to cases of Interpleader, in which the Costs of Possession are in the discretion of the Judge.

(5) If out of District, add Postage.

TABLE OF FEES,

Treasury Warrant of the 15th of November, 1850.

HEARING.				Adjournment.		Application for New Trial, or to set aside Proceedings, or inquiring into Sureties, or for keeping possession of Goods, per Day. (4)		Recognizance, Bond, or Security for Costs.		WARRANT, ATTACHMENT, OR EXECUTION. (6)					SUMMONS FOR COMMITMENT. N.B. On Amount due.						HEARING on Summons for Commitment.	FEES on Taxation.		
Without Jury. (3) (8)		With Jury. (8) (9)								Judge and Clerk.		Bailiff. (1)	TOTAL. (5)		Judge and Clerk.		Bailiff. (1)		TOTAL.			ATTORNEY'S. Contract. Tort.	COUNSEL'S.	
s.	d.	s.	d.	s.	d.	s.	d.	s.	d.	s.	d.	s.	s.	d.	s.	d.	s.	d.	s.	d.	s.	s.	s.	d.
																						(7)	(7)	
2	2	3	2	0	3	0	6	0	4	0	2	1	1	2	0	6	0	1	0	7	1			
4	4	6	4	0	6	1	0	0	8	0	4	2	2	4	1	0	0	2	1	2	2			
6	6	9	6	0	9	1	6	1	0	0	6	3	3	6	1	6	0	3	1	9	3	10	At and	
8	8	12	8	1	0	2	0	1	4	0	8	4	4	8	2	0	0	4	2	4	4	10	exceeding £5,	
10	10	15	10	1	3	2	6	1	8	0	10	5	5	10	2	6	0	5	2	11	5	10	23	6
13	0	19	0	1	6	3	0	2	0	1	0	6	7	0	3	0	0	6	3	6	6	15	23	6
15	2	22	2	1	9	3	6	2	4	1	2	7	8	2	3	6	0	7	4	1	7	15	23	6
17	4	25	4	2	0	4	0	2	8	1	4	8	9	4	4	0	0	8	4	8	8	15	23	6
19	6	28	6	2	3	4	6	3	0	1	6	9	10	6	4	6	0	9	5	3	9	15	23	6
21	8	31	8	2	6	5	0	3	4	1	8	10	11	8	5	0	0	10	5	10	10	15	23	6
23	10	34	10	2	9	5	6	3	8	1	10	11	12	10	5	6	0	11	6	5	11	15	23	6
26	0	38	0	3	0	6	0	4	0	2	0	12	14	0	6	0	1	0	7	0	12	15	23	6
28	2	41	2	3	3	6	6	4	4	2	2	13	15	2	6	6	1	1	7	7	13	15	23	6
30	4	44	4	3	6	7	0	4	8	2	4	14	16	4	7	0	1	2	8	2	14	15	23	6
32	6	47	6	3	9	7	6	5	0	2	6	15	17	6	7	6	1	3	8	9	15	15	23	6
34	8	50	8	4	0	8	0	5	4	2	8	16	18	8	8	0	1	4	9	4	16	15	23	6
36	10	53	10	4	3	8	6	5	8	2	10	17	19	10	8	6	1	5	9	11	17	15	23	6
39	0	57	0	4	6	9	0	6	0	3	0	18	21	0	9	0	1	6	10	6	18	15	23	6
41	2	60	2	4	9	9	6	6	4	3	2	19	22	2	9	6	1	7	11	1	19	15	23	6
																						Above £20 to £35,		
43	4	63	4	5	0	10	0	6	8	3	4	20	23	4	10	0	1	8	11	8	20	30	44	6
																						Above £35 to £50,		
43	4	63	4	5	0	10	0	6	8	3	4	20	23	4	10	0	1	8	11	8	20	40	44	6
108	4	158	4	12	6	25	0	16	8	8	4	50	58	4	25	0	4	2	29	2	50	40	44	6

	s.	d.
Notice to Plaintiff of Payment of each Instalment, including Postage	0	2
Bailiff's Mileage, carrying Delinquent to Prison, including all Assistance, per Mile	1	0
Issuing Warrant to Clerk of another Court, without reference to the amount of demand	2	6

(6) These Fees are payable on the Amount for which Warrant issues.
(7) No Fee to be allowed for employing Barrister or Attorney, in the case of Plaintiff, where less than £5 is recovered, or, in case of Defendant, where less than £5 is claimed, unless by order of the Judge.
(8) Add Bailiff's Poundage as in *Column* No. 3, and Mileage *Note* (1.)
(9) The party requiring a Jury must, at the time of giving Notice to the Clerk, deposit 5*s.* for payment of the Jury (9 & 10 Vict. c. 95, s. 71.)

☞ On proceedings in Replevin, the Fees to be regulated by the Amount distrained for; and for the Recovery of Tenements, on the yearly rent or value of the same.

BOOK XI. FEES AND COSTS.

The County Court Amendment Act (12 & 13 Vict. c. 101, s. 6), authorizes one of Her Majesty's principal Secretaries of State, with the consent of the Lords of the Treasury, to alter and reduce the amount of the above fees.

The section is as follows:—

Section 6.

Power to Secretary of State, with consent of the Treasury, to alter fees payable on proceedings in County Courts.

Sect. 6. And be it enacted, that it shall be lawful for one of Her Majesty's principal Secretaries of State, with the consent of the Commissioners of Her Majesty's Treasury, from time to time to regulate or vary, lessen or increase, the fees or sums in the name of fees now payable, or which from time to time may be payable, on the several proceedings in the Courts holden under the said Act of the tenth year of Her Majesty to the Judges, Clerks, and High Bailiffs of such Courts, and such fees or sums may be so regulated from time to time by way of per-centage on the amount of the demand; and such Secretary of State, with such consent as aforesaid, may from time to time appoint, instead of all or any of the fees or sums in the name of fees now payable or which may from time to time be payable as aforesaid, other fees or sums by way of per-centage or otherwise, and to be payable on such proceedings under such last-mentioned Act as such Secretary of State with such consent as aforesaid may direct.

And a similar proviso is contained in section 5 of 13 & 14 Vict. c. 61:—

13 & 14 Vict. c. 61, s. 5.

Fees to be taken according to schedule.

Sect. 5. And be it enacted, that there shall be payable on every proceeding in the Courts holden under the said Act of the tenth year of Her Majesty, to the Judges, Clerks, and High Bailiffs of the several Courts, in every case where the sum sought to be recovered shall exceed twenty pounds, such fees as are set down in the schedule marked D. to the said Act of the tenth year of Her Majesty annexed as fees payable upon demands exceeding the sum of ten pounds; and the fees on every proceeding shall be paid in the first instance by the plaintiff or party on whose behalf such proceeding is to be had on or before such proceeding, and in default payment thereof shall be enforced

by order of the Judge by such ways and means as any debt or damage ordered to be paid by the Court can be recovered; and the fees upon executions shall be paid into Court at the time of the issue of the warrant of execution, and shall be paid by the Clerk of the Court to the Bailiff upon the return of the warrant of execution, and not before: provided always, that it shall be lawful for one of Her Majesty's principal Secretaries of State, with the consent of the Commissioners of Her Majesty's Treasury, from time to time to regulate or vary, lessen or increase, the fees payable under this Act or the said recited Acts, or either of them, in such manner as to him shall seem fit: provided also, that all sums payable in the name of fees to such officers of the Court as shall be paid by salaries shall be paid from time to time to the treasurer of the Court, and shall be applied by such treasurer in the manner provided by the said Act of the tenth year of Her Majesty.

Power to Secretary of State, with consent of the Treasury, to alter fees.

576–7. *Costs for non-attendance of Plaintiff.*—Provision is made by section 10 of the Extension Act for the case of plaintiffs neglecting to attend at the hearing, as follows :—

Sect. 10. And be it enacted, that in every case where the plaintiff shall not appear, either by himself or his attorney, upon the day of the return of any summons for hearing, or at any continuation or adjournment of the said hearing, and the defendant shall appear either by himself or his attorney upon such day of hearing, continuation, or adjournment, it shall be lawful for the Judge to award to the defendant or to his attorney, by way of costs of his attendance and satisfaction for his trouble, such sum as the Judge in his discretion shall think fit; and the sum so awarded shall be recoverable from the plaintiff by such ways and means as any debt or damage ordered to be paid by the same Court can be recovered.

13 & 14 Vict. c. 61, s. 10.

If plaintiff or his attorney do not appear on day of hearing, costs may be awarded to defendant for his trouble and attendance.

We have already seen that it is within the discretion of the Judge to allow or disallow costs. This discretion should be governed by certain fixed principles, and it is desirable that as great uniformity of practice as possible should prevail in the different Courts in this respect. We shall, therefore, subjoin here some of the reported decisions on the subject.

BOOK XI. FEES AND COSTS.

Instances in which general costs have been allowed.

Thomas v. Evans.

578. *Instances in which general Costs have been allowed.*—Where the cause was struck out for the non-appearance of the plaintiff, the defendant was allowed as costs a sum equivalent to the mileage and his day's labour according to the scale allowed for witnesses: (*Thomas* v. *Evans*, 1 C. C. Ch. 4.) *Pembrokeshire.*

Scott v. Phillips.

In a case where the plaintiff withdrew his plaint after receiving notice of a special defence, the defendant was held entitled to his costs up to the period of such withdrawing: (*Scott* v. *Phillips*, 1 C. C. Ch. 39.) *Dorsetshire.*

Andrew v. Hocking.

In *Andrew* v. *Hocking* (1 C. C. Ch. 39), the action having been abandoned, the Judge of the Cornwall Court allowed the costs, but not the fee for applying for them.

Jenkins v. Owen.

Where the plaintiff was nonsuited in consequence of not calling the attesting witness to a promissory note, the defendant was allowed his costs. (*Jenkins* v. *Owen* (1 C. C. Ch. 81.) *Cardiganshire.*

Sparling v. Bevan.

The Judge of the Essex Court, in the case of *Sparling* v. *Bevan* (1 C. C. Ch. 342), held that a notice by the plaintiff to the defendant that he should apply to the Court for an adjournment of the hearing, will not deprive the defendant of his right to costs for attending at the return of the summons, when such adjournment was served and granted.

Dyer v. Cooper.

In a case where the defendant left the amount of the claim at the plaintiff's house during his absence, in the interval between the issuing and the service of the summons, the plaintiff was allowed his costs: (*Dyer* v. *Cooper*, 1 C. C. Ch. 24.) *Hampshire.*

Sainsbury v. Wheeler.

Anon.

Where the plaint was entered at eleven and the debt paid at two, though no summons had been served, the defendant was held liable to pay the costs: (*Sainsbury* v. *Wheeler*, 1 C. C. Ch. 106.) *Wiltshire.* The Judge of the Warwickshire Court, however, held otherwise: (*Anon.* 9 L. T. 88.)

An attorney first sued in the Superior Court, then on the judgment, and then in the County Court. Mr. CHILTON (*Greenwich*), refused to allow the plaintiff his costs: (*Lewis* v. *Buckland*, 1 C. C. Ch. 318.) *Lewis* v. *Buckland.*

INSTANCES WHERE GENERAL COSTS HAVE BEEN DISALLOWED.

In a case where the plaint was struck out, on account of the non-appearance of the parties on the day of hearing, it was held that the defendant was not entitled to his costs: (*Cox* v. *Ratcliffe*, C. C. Ch. 173.) *Surrey.* *Cox* v. *Ratcliffe.*

In the case of *Fesemeyer* v. *Clarke* (1 C. C. Ch. 15,) in the City of London Court, it was held that the defendant is not entitled to his costs where the plaintiff does not appear to support his plaint, without giving himself a *locus standi*, by appearing and paying the amount of fees paid by the plaintiff, upon which the plaint will be called on, the cause struck out, and the defendant allowed the costs of the day, including the attendance of his attorney. It was also held that the plaintiff will not be allowed the costs of attorney and witnesses where the defendant admits the debt, unless he has previously refused to do so, and so rendered their attendance necessary. *Fesemeyer* v. *Clarke.*

The Judge of the Cardiganshire Court ruled in the case of *Evans* v. *Evans* (1 C. C. Ch. 1), that the Court cannot give costs where the jurisdiction is ousted by a question of title. The same was also held in the case of *Davies* v. *Howard* (*Caermarthenshire*), and in *Lewis* v. *Sheppard* (*Caermarthenshire*), the same Judge would not allow costs, where the summons was dismissed as a nullity. The receipt of costs, however, is an admission of the jurisdiction of the Court, and concludes the recipient from afterwards questioning it: (*Sparrow* v. *Reed*, Bail Court, 1 C. C. Ch. 262.) *Evans* v *Evans.* *Davies* v. *Howard.* *Lewis* v. *Sheppard.* *Sparrow* v. *Reed.*

Where an Attorney first sued in a Superior Court, then on the judgment, and then in the County Court, the Judge of the Greenwich Court disallowed the costs: (*Lewis* v *Buckland*, 1 C. C. Ch. 318.) *Lewis* v. *Buckland.*

Where the defendant does not appear, the plaintiff will not be allowed costs without paying the hearing fee: (*Holditch* v *Brookbank*, 2 C. C. Ch. 182.) *Holditch* v. *Brookbank.*

INSTANCES WHERE ATTORNEYS' COSTS HAVE BEEN ALLOWED.

Fursden v. *Dunn.* In a case where the debt claimed exceeded 40*s*., but less was recovered, the attorney was held entitled to his costs: (*Fursden* v. *Dunn*, 1 C. C. Ch. 39.) *Devonshire.*

Spain v. *Lawrence.* Where the debt was under 5*l*., although no costs of Attorney were allowed, costs for preparing evidence, such as a certificated extract, were allowed: (*Spain* v. *Lawrence*, 1 C. C. Ch. 65.) *East Kent.*

The Judge of the Derbyshire Court held that the attorney's fee could not be allowed as costs in the cause, unless more than 5*l*. are recovered.

Anon. It was ruled in an *Anonymous* case (1 C. C. Ch. 1), in Devonshire, that where professional men were employed on both sides, their costs would be allowed as a matter of course; but when on one side only, there must be a special application. And the Judge of the Cardiganshire Court directed that if parties did not know how to proceed, they must get professional assistance, the costs of which would be allowed when *Anon.* the Court had power: (*Anon.* 1 C. C. Ch. 1.)

Ballois v. *Culhane.* In the case of *Ballois* v. *Culhane* (1 C. C. Ch. 265,) the Judge of the West Kent Court declared that he would allow the costs of an Attorney in every case where points of law were likely to arise.

Anon. In a case at Southampton (*Anon.* 9 L. T. 62), the costs of an Attorney, who appeared for the defendant, were allowed under the 79th section of 9 & 10 Vict. c. 95; the attendance of the Attorney being deemed that of the defendant.

The 91st section of 9 & 10 Vict. c. 95, applies only to costs as between party and party, and an Attorney will be permitted to recover in this Court his regular costs for professional services in getting up and con- *Buchanan* v. *Roberts.* ducting a case there for his client: (*Buchanan* v. *Roberts*, 2 C. C. Ch. 156.)

Fees to counsel. 579. *Fees to Counsel.*—In cases where a barrister is employed, the Judge of the Wiltshire Court declared that he would allow the Attorney's fee for instructing *Smith* v. *Willis.* counsel as well as the fee to counsel: (*Smith* v. *Willis*, 1 C. C. Ch. 175.) And the same practice has been adopted in Berkshire.

In an action brought to recover possession of a

tenement let at 6*l.* a year, the costs of counsel and Attorney were allowed in *Jones* v. *Roderick* (1 C. C. Ch. 1.) *Cardiganshire.*

When two counsel are employed for a party in a cause, one only will be allowed on taxation in the Warwickshire Court: (*Anon.* 1 C. C. Ch. 126.) *Jones* v. *Roderick.* *Anon.*

Storks, Serjt., ruled that where a witness for the plaintiff does not appear, although subpœnaed, and the case is adjourned, the Court will allow the fee of the defendant's counsel as costs of the day: (*Graham* v. *Bunn,* 2 C. C. Ch. 182.) *Graham* v. *Bunn.*

Instances where Attorneys' Costs have been disallowed.

It was held by the Judge of the Essex Court in *Astley* v. *Tiffin* (1 C. C. Ch. 3), that the Judge had no power to give costs of appearing by attorney to a successful defendant in a plaint for the recovery of a tenement. *Astley* v. *Tiffin.*

The costs of an attorney will not be allowed in the Shoreditch Court (*London*), unless the matter is contested, even though the party have reason to believe it will, and comes prepared: (*Washington* v. *Salterwhaite,* 1 C. C. Ch. 105.) *Washington* v. *Salterwhaite.*

In the case of *Dunn* v. *Davies* (1 C. C. Ch. 61), Mr. Temple (*Staffordshire*) refused to allow the costs of the plaintiff's attorney, though the debt amounted to 20*l.* (reduced, for the purpose of suing, from double the amount), saying, that as to costs, he would take the defendant's circumstances into consideration. *Dunn* v. *Davies.*

580. *Costs of Witnesses.*—The scale of allowance in the schedule is as follows: Costs of witnesses.

	£	*s.*	*d.*
Gentlemen, merchants, bankers, and professional men	0	7	6
Tradesmen, auctioneers, accountants, clerks and yeomen	0	5	0
Journeymen, labourers, and the like	0	2	0
Travelling expenses per mile, one way	0	0	6

The Judge of the Dartford Court, in *Jones* v. *King* (1 C. C. Ch. 85), allowed the costs of witnesses, though the money was paid into Court within the five days. *Jones* v. *King.*

BOOK XI. FEES AND COSTS.

Balme v. *Berkeley.*

In *Balme* v. *Berkeley* (1 C. C. Ch. 265), the Judge of the Gloucestershire Court allowed to witnesses out of the district, who were obliged to leave home the day previous to the trial, payment for half a day going to, and half a day returning from, attending the trial, and single mileage.

Costs of parties to the suit examined as witnesses.

581. *Costs of Parties to the Suit examined as Witnesses.*—It was held in the above case of *Balme* v. *Berkeley*, that a party to the suit, if a material witness, is entitled to his costs as other witnesses. It is, however, a rule of Court in Pembrokeshire, that parties to the suit, attending as witnesses, will not be allowed their expenses. And in *Perry* v. *Morgan* (9 L. T. 62), costs were refused to the wives of the parties attending as witnesses.

Perry v. *Morgan.*

Security for costs.

582. *Security for Costs.*—The Judge of the Gloucestershire Court, in the case of *Abrams* v. *Kimberley* (2 C. C. Ch. 232), held that the Court has power, under the 78th section of 9 & 10 Vict. c. 95, to make an order for a foreigner to give security for costs, if it shall think fit. But at the same time the Judge stated that no order to give security will be made unless a notice be given to the other party to the action a reasonable time before the motion is made.

Abrams v. *Kimberley.*

Where plaintiff resides in Jersey, the Court will require him to give security for costs: (*Simpson* v. *Marten*, 2 C. C. Ch. 157.)

Simpson v. *Marten.*

BOOK XII.

COGNOVIT ACTIONEM, OR CONFESSION OF DEBT.

Sections 8 and 9 of 13 & 14 Vict. c. 61, provide means whereby a defendant may avoid the expense and annoyance of a trial by confessing the debt, or entering into such arrangements as he and the plaintiff may agree upon, to be enforced by the process of the Court. Book XII. Cognovit Actionem.

Sect. 8. And be it enacted, that any person against whom a plaint shall be entered in any County Court may, if he think fit, whether he be summoned upon such plaint or not, in the presence of the Clerk or Assistant Clerk of the Court in which such plaint shall have been entered, or one of their Clerks respectively, or in the presence of an attorney of one of the Superior Courts, sign a statement confessing and admitting the amount of the debt or demand for which such plaint shall have been entered, and such Clerk or Assistant Clerk shall, as soon as conveniently may be after receiving such statement, send notice thereof to the plaintiff, by the post or by causing the same to be delivered at his usual place of abode or business, and thereupon it shall not be necessary for the said plaintiff to prove the debt or demand so confessed and admitted as aforesaid, but the Judge of such Court, at the next sitting of such Court, whether the parties or either of them attend such Court or not, shall, upon proof by affidavit of the signature of the party, if such statement were not made in the presence of the Clerk or Assistant Clerk, proceed to give judgment for the debt or demand so confessed and admitted, in the same manner, and subject to the same conditions, as if he had tried the cause and given judgment thereupon, under the provisions of the said first-recited Act.

13 & 14 Vict. c. 61, s. 8.

Confession of debt, or parts of debt, &c. and judgment thereupon.

BOOK XII. COGNOVIT ACTIONEM.

The following are suggested as forms applicable to the provisions of this section:

Confession of debt or demand.

FORM OF CONFESSION OF DEBT OR DEMAND.

No.

In the County Court of *at*

Between { *A. B, Plaintiff,* *and* *C. D., Defendant.* }

I, C. D., the above-named defendant, do hereby confess and admit the debt [or *demand,* as the case may be,] *in this action to the amount of £*

(*Signed*) *C. D., Defendant.*

Signed by the said C. D., on this *day of* *in the presence of E. F., Clerk of the County Court of* [or, *an attorney of the Court of Queen's Bench at Westminster.*]

Witness, E. F.

Notice by Clerk of confession of debt or demand.

NOTICE BY CLERK OF CONFESSION OF DEBT.

No.

In the County Court of *at*

Between { *A. B., Plaintiff,* *and* *C. D., Defendant.* }

Sir,—I hereby give you notice that I have received from the above-named defendant a statement, whereby he confesses and admits the debt [or *demand*] *in this suit to the amount of £*

And, take notice, that it will not be necessary for you to prove the said demand so confessed and admitted as aforesaid, but the judge of the said court will, at the next sitting thereof, whether you shall appear or not, upon due proof of the signature of the defendant, proceed to give judgment for the demand so confessed and admitted.

Yours, &c.,

E. F., Clerk.

To *the above-named Plaintiff.*

Dated

The form of AFFIDAVIT may be as follows:—

BOOK XII. COGNOVIT ACTIONEM.

Form of affidavit.

No.

In the County Court of , at ,

Between { *A. B., Plaintiff, and C. D., Defendant.* }

E. F., of , in the county of , gentleman, maketh oath and saith that the signature , to the statement of confession of debt hereunto annexed, is the proper handwriting of C. D., the above-named defendant and that the same was made in the presence of this deponent.

Sworn at , in the county of , this day of , 1850, before me,

——.

9. Agreement as to the amount of debts, &c and conditions of payment.

Sect. 9. And be it enacted, that if the person against whom a plaint shall be entered in any County Court can agree with the person on whose behalf such plaint shall have been entered upon the amount of the debt or demand in respect of which such plaint shall have been entered, and upon the terms and conditions upon which the same shall be paid or satisfied, it shall be lawful for such persons respectively, in the presence of the Clerk or Assistant Clerk of the Court in which such plaint shall have been entered, or one of their Clerks respectively, or in the presence of an Attorney of one of the Superior Courts, to sign a statement of the amount of the debt or demand so agreed upon between such persons respectively, and of the terms and conditions upon which the same shall be paid or satisfied, such Clerk or Assistant Clerk shall receive such statement, and shall thereupon, upon proof by affidavit of the signature of the party, if such statement were not made in the presence of the Clerk or Assistant Clerk, enter up judgment for the plaintiff for the amount of the debt or demand so agreed on, and upon the terms and conditions mentioned in such statement; and such judgment shall to all intents and purposes be the same, and have the same effect, and shall be enforced and enforceable in the same manner, as if it had been a judgment of the Judge of the said Court.

Book XII. COGNOVIT ACTIONEM.

Form of statement.

The form of STATEMENT may be as follows:—

No.

In the County Court of , at .

Between { *A. B., Plaintiff,* *and* *C. D., Defendant.* }

It is this day stated and agreed between the plaintiff and the defendant in this suit that the amount of the [*debt* or *demand*] *due to the said plaintiff is £ , and that the terms and conditions on which the said sum of £ is to be paid are as follows:*—[Here insert terms and conditions.] *Witness the hands of the parties this day of* 18 . *(Signed)*

A. B., Plaintiff,
C. D., Defendant.

Signed by the said and , on this day of , in the presence of E. F., Clerk of the County Court of , [or, *an attorney of the Court, &c.*, as the case may be.]

Witness, E. F.

The Affidavit may be in the same form as *ante*, p. 598*a*.

APPENDIX.

APPENDIX

STATUTES RELATING TO COUNTY COURTS.

9 & 10 VICT. c. 95.

An Act for the more easy Recovery of Small Debts and Demands in England.—[28*th August*, 1846.]

WHEREAS sundry Acts of Parliament have been passed from time to time for the more easy and speedy recovery of Small Debts within certain towns, parishes, and places in England: and whereas by an Act passed in the eighth year of the reign of Her Majesty, intituled "An Act to amend the Laws of Insolvency, Bankruptcy, and Execution," arrest upon final process in actions of debt not exceeding twenty pounds was abolished, except as to certain cases of fraud and other misconduct of the debtors therein mentioned: and whereas by an Act passed in the ninth year of the reign of Her said Majesty, intituled "An Act for the better securing the Payment of Small Debts," further remedies were given to judgment creditors, in respect of debts not exceeding twenty pounds, for the discovery of the property of debtors, and punishment of frauds committed by them: and whereas by the last-mentioned Act Her Majesty is enabled, with the advice of her Privy Council, to extend the jurisdiction of certain Courts of Requests and other Courts for the Recovery of Small Debts to all debts and demands, and all damages arising out of any express or implied agreement, not exceeding twenty

7 & 8 Vict. c. 96.

8 & 9 Vict. c. 127.

pounds, and also to enlarge and in certain cases to contract the district of such Courts, and make certain other alterations in the practice of such Courts in manner in the now-reciting Act mentioned; and it is expedient that the provisions of such Acts should be amended, and that one rule and manner of proceeding for the recovery of small debts and demands should prevail throughout England: and whereas the County Court is a Court of ancient jurisdiction having cognizance of all pleas of personal actions to any amount by virtue of a writ of justicies issued in that behalf: and whereas the proceedings in the County Court are dilatory and expensive, and it is expedient to alter and regulate the manner of proceeding in the said Courts for the recovery of small debts and demands, and that the Courts established under the recited Acts of Parliament, or such of them as ought to be continued, should be holden after the passing of this Act as branches of the County Court under the provisions of this Act, and that power should be given to Her Majesty to effect these changes at such times and in such manner as may be deemed expedient by Her Majesty, with the advice of her Privy Council: be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that it shall be lawful for Her Majesty, with the advice of her Privy Council, from time to time to order that this Act shall be put in force in such county or counties as to Her Majesty, with the advice aforesaid, from time to time shall seem fit; and this Act shall extend to those counties concerning which any such order shall have been made, and not otherwise or elsewhere: provided always, that no Court shall be established under this Act in the city of London.

Her Majesty may order this Act to be put in execution.

Counties to be divided into districts.

2. And be it enacted, that it shall be lawful for Her Majesty, with the advice aforesaid, to divide the whole or part of any such county, including all counties of cities and counties of towns, cities, boroughs, towns, ports, and places, liberties and franchises therein contained, or thereunto adjoining, into districts, and to order that the County Court shall be holden for the recovery of debts and demands under this Act in each of such districts, and from time to time to alter such districts as to Her Majesty, with the advice aforesaid, shall seem fit, and to

order from time to time that the number of districts in and for which the Court shall be holden shall be increased until the whole of such county shall be within the provisions of this Act, and with the advice aforesaid to alter the place of holding any such Court, or to order that the holding of any such Court be discontinued, or to consolidate any two or more of such districts, and from time to time, with the advice aforesaid, to declare by what name and in what towns and places the County Court shall be holden in each district; and if it shall appear to Her Majesty that any part of any county, liberty, city, borough, or district may conveniently be declared within the jurisdiction of the County Court of an adjoining county, it shall be lawful for Her Majesty, with the advice aforesaid, to order that such part shall be taken to be within the jurisdiction of the County Court holden for the purposes of this Act for such adjoining county in and for such district as Her Majesty shall order, in like manner as if it were part of such adjoining county.

Courts held under this Act to have the same jurisdiction as County Courts, and to be Courts of Record.

3. And be it enacted, that every Court to be holden under this Act shall have all the jurisdiction and powers of the County Court for the recovery of debts and demands, as altered by this Act, throughout the whole district for which it is holden, and there shall be a Judge for each district to be created under this Act, and the County Court may be holden simultaneously in all or any of such districts; and every Court holden under this Act shall be a Court of Record.

Preserving the jurisdiction of County Courts.

4. And be it enacted, that for all purposes, except those which shall be within the jurisdiction of the Courts holden under this Act, the County Court shall be holden as if this Act had not been passed; and all proceedings commenced in the County Court of any county before the time when any Court shall be holden under this Act in such county may be continued, executed, and enforced against all persons liable thereunto, in the same manner as if they had been commenced under the authority of this Act.

Her Majesty may order any Court under Acts in schedules

5. And be it enacted, that it shall be lawful for Her Majesty, with the advice of her Privy Council, to order that any Court holden for the recovery of small debts or demands

(A.) and (B.) to be held as a County Court, and may assign a district to the same.

within the provisions of any Act cited in either of the schedules annexed to this Act, and marked (A.) and (B.) respectively, shall be holden as a County Court; and it shall be lawful for Her Majesty, with the advice aforesaid, to assign a district to every such Court, either greater or less than the district in which the Court holden under the provisions of any such Act now has jurisdiction, and to alter the place of holding any such Court, or to order that any such Court be abolished; and every such Court shall continue to be holden under the Act according to which it is now constituted or regulated until the time mentioned in any such order which shall be made with reference to such Court; and from and after the time mentioned in any such order the Act or Acts under which such Court is now constituted, so far as the same relate to the establishment or jurisdiction or practice of a Court for the recovery of small debts or demands, shall be repealed, but not so as to revive any Act thereby repealed; and such Court so ordered to be holden as a County Court shall thenceforth be holden as a County Court under this Act, and in all respects as if it had been originally constituted under the provisions of this Act.

When a Court shall be established under this Act, recited Acts and all other Acts affecting its jurisdiction, repealed.

6. And be it enacted, that as soon as a Court shall have been established in any district under this Act, and also at the time mentioned in any such order which shall have been made as aforesaid for holding any of the Courts mentioned in either of the said schedules as a County Court under this Act, the several provisions and enactments of the said Acts of Parliament of the eighth and of the ninth year of the reign of Her Majesty, and of every other Act of Parliament heretofore passed, so far as the same respectively relate to or affect the jurisdiction and practice of the Court so established or ordered to be holden as a County Court, or give jurisdiction to any Court, or to any Commissioner of the Court of Bankruptcy, with respect to judgments or orders obtained in the Court so established or ordered to be holden as a County Court, shall be repealed.

Proceedings under former Acts to be valid.

7. Provided always, and be it enacted, that all proceedings in execution of the said Acts or any of them commenced before the passing of this Act, or before the days severally appointed for the alteration of the constitution of the said Courts, shall be as valid to all intents and purposes as if this Act had not been passed, or as if the said Courts had not been altered, and

may be continued, executed, and enforced against all persons liable thereto in the same manner as if they had been commenced under the authority of this Act.

Orders in Council to be published in the London Gazette.

8. And be it enacted, that any order in council made for the purposes of this Act shall be published in the *London Gazette;* and notice of the intention of Her Majesty to take into consideration the propriety of making any such order shall be published in the *London Gazette* one calendar month at least before any such order shall be made.

Appointment and qualification of Judges.

9. And be it enacted, that the Lord Chancellor shall appoint as many fit persons as are needed to be Judges of the County Court under this Act, each of whom shall be a barrister at law who shall be of seven years standing, or who shall have practised as a barrister and special pleader for at least seven years, or a barrister or attorney at law who, under the provisions of any of the Acts cited in the said schedules (A.) and (B.), or under the provisions of either of the said Acts of the eighth year and of the ninth year of the reign of Her Majesty, shall have been nominated or appointed to preside in or hold any Court constituted or held under any of the Acts cited in either of the said schedules (A.) and (B.), whether by the title of Judge or Barrister, or County Clerk, Assessor, or Steward, or deputy Steward, or by any other title or style whatsoever, or a person filling the office of Judge of the County Court, or county Clerk, in the same county, at the time of the passing of this Act: provided always, that every attorney at law who shall be appointed a Judge of the County Court under this Act, and who shall be the partner of any other attorney at law, shall, within twelve calendar months next after entering on the said office of Judge of the County Court, dissolve such partnership or vacate the said office of Judge, and shall not during his continuance as such Judge enter into any new partnership; and that no attorney at law who shall be appointed a Judge of any County Court under this Act shall be, either by himself or his partner, employed or act as town clerk, or clerk of the peace of any county, city, or borough, or as clerk to any bench of justices, or as clerk or secretary to any board of guardians or governors or directors of the poor, or of any vestry or local or parochial board of trustees or commissioners, or of any public company or corporation what-

Proviso as to attorneys acting as Judges under Acts cited in schedules (A.) and (B.)

soever, or directly or indirectly concerned as attorney or agent for any party in any Court regulated by this Act, or, after the expiration of the said term of twelve calendar months, in any other Court of law or equity.

Judges at present acting in the Courts of Bath, Bristol, Liverpool, and Manchester entitled to the first appointment under this Act for those places.

10. And whereas, under the provisions of the several Acts cited in the schedule marked (A.) annexed to this Act, barristers have been appointed and now act as salaried Commissioner or as Assessor or assistant to the Commissioners appointed to hold the several Courts of Request constituted or regulated by the said several Acts in the cities of Bath and Bristol and in the boroughs of Liverpool and Manchester; be it enacted, that when any order shall be made for holding a Court under this Act within the said cities and boroughs respectively, districts shall be constituted which shall comprise at least the whole of the said cities and boroughs respectively, and every such barrister who shall have been on the first day of June in this year the salaried Commissioner or assessor or assistant to the Commissioners appointed to hold the said several Courts of Request, and who shall continue to hold the same office at the time when such order as last aforesaid shall be made respecting their city or borough respectively, shall be entitled to be appointed the first Judge under this Act of the Court to be holden in and for the said cities and boroughs respectively.

Stewards of the manors of Sheffield and Ecclesall appointed under 48 Geo. 3, c. 103, to be the first Judges under this Act for those districts.

11. And whereas an Act was passed in the forty-eighth year of the reign of King George the Third, intituled "An Act for regulating the Proceedings in the Courts Baron of the Manors of Sheffield and Ecclesall in the County of York," under the provisions of which Act John Parker Esquire has been appointed and is steward of the manor of Sheffield, and Daniel Maude Esquire has been appointed and is steward of the manor of Ecclesall; be it enacted, that if the said John Parker shall continue steward of the manor of Sheffield when any order shall be made for holding a Court under this Act within the liberty of Hallamshire, a district shall be constituted which shall comprise at least the whole liberty of Hellamshire, except the hamlet or bierlow of Ecclesall, and if the said Daniel Maude shall continue steward of the manor of Ecclesall when any order shall be made for holding a Court under this Act in the manor of Ecclesall, another district shall be constituted

under the provisions of this Act, which shall comprise at least the whole hamlet or bierlow of Ecclesall; and in such cases respectively the said John Parker shall be entitled to be appointed the first Judge under this Act of the Court to be holden in the district comprising the liberty of Hallamshire, except the bierlow of Ecclesall, and the said Daniel Maude shall be entitled to be appointed the first Judge under this Act or the Court to be holden in the district comprising the bierlow of Ecclesall, and the districts of the said two Courts shall not be reduced within the said limits respectively so long as the said John Parker and Daniel Maude respectively shall continue Judges of the said Courts; and the present deputy stewards of the said two Courts baron shall be entitled to be appointed the first Clerks of the said two Courts respectively, or in case of the consolidation of the said two Courts, to act jointly as Clerks of the consolidated Court, under such regulations as to the division of duties and emoluments of the office as shall be made by order of Court, with reference to the duties and emoluments of their offices in the said two Courts, before such consolidation, in case of difference between them; and the said John Parker and Daniel Maude shall have the same privilege of holding the said Courts by deputy which they now have of holding the said Courts baron by deputy, provided only that the appointment of every such deputy shall be subject to the approval of one of Her Majesty's principal Secretaries of State; and the said John Parker and Daniel Maude shall hold the said Courts in all other respects according to the provisions of this Act.

The present County Clerk of Middlesex, appointed under 23 Geo. 2, c. 33, to be the first Judge under this Act, and may continue to appoint a deputy, subject to approval of Secretary of State.

12. And whereas the County Court of Middlesex is regulated under the provisions of an Act passed in the twenty-third year of the reign of King George the Second, intituled "An Act for preventing Delays and Expenses in the Proceedings in the County Court of Middlesex, and for the more easy and speedy Recovery of Small Debts in the said County Court," under which the County Clerk is empowered to appoint a deputy to act for him in his said office of County Clerk: and whereas the said county of Middlesex within the jurisdiction of the said Court is so populous that it will be expedient that several districts should be constituted therein under this Act; be it enacted, that if the present County Clerk of Middlesex shall continue County Clerk of Middlesex when any order shall

be made for holding a Court under this Act within the jurisdiction of the said Court, he shall be entitled to be appointed the first Judge under this Act of such of the said districts as he shall select, and shall hold the said Court in all respects according to the provisions of this Act, except that he shall be removable from the said office of Judge only in the same manner as he is now by law removable from the office of County Clerk, and that he shall have power to hold the Court by his present deputy, and on vacancy of the office of deputy to appoint a deputy to hold the said Court for him, provided such deputy be a barrister of not less than three years standing, and shall be approved by one of Her Majesty's principal Secretaries of State; and the present Registrar of the said County Court shall be entitled to be the first Clerk of the Court holden in the district so selected by the County Clerk; and all suits and proceedings commenced in the County Court of Middlesex before the division of the said County into districts shall be continued, and may be executed and enforced, as if they had commenced under this Act before the said County Clerk in the district so selected by him.

Present Registrar to be the first Clerk.

Provisions for certain lords of manors having rights of appointment under the Acts hereby repealed.

13. And be it enacted, that whenever any order shall be made for holding a Court under this Act within the several towns mentioned in the first column of the schedule marked (C.) annexed to this Act, then, upon the next vacancy which shall happen after the passing of this Act in the several offices mentioned in the second column of the said schedule (C.) in conjunction with such Courts, the several lords for the time being of the manors and liberties mentioned in the third column of the said schedule (C.) in conjunction with the said Courts shall be entitled to appoint persons, properly qualified according to the provisions of this Act, to fill the said offices respectively, subject nevertheless in each case to the approval of one of Her Majesty's principal Secretaries of State.

Lords of manors, &c. may surrender Courts, with consent of persons interested.

14. And be it enacted, that it shall be lawful for the lord of any hundred, or of any honor, manor, or liberty, having any Court in right thereof in which debts or demands may be recovered, to surrender to Her Majesty the right of holding such Court (for any such purpose, with the consent of any steward or other officer, if any, having a freehold office in such Court,)

or upon the next vacancy in any such freehold office; and from and after such surrender such Court shall be discontinued, and the right of holding such Court shall cease, and all proceedings commenced in such Court may thereafter be continued, and shall be enforced and executed, as if they had been commenced under the authority of this Act in a County Court holden for the district in which the cause of action arose; but no person shall be entitled to claim any compensation under this Act by reason of any such surrender: provided always, that the surrender of the right of holding any such Court for the recovery of debts and demands shall not be deemed to infer the surrender or loss of any other franchise incident to the lordship of such hundred, honor, manor, or liberty, and that the Court thereof may be holden for all other purposes, if any, incident thereunto, as now by law it may.

Appointments of Judges who have previously officiated in any County Court, not subject to 5 & 6 Vict. c. 122.

15. And be it declared and enacted, that the appointment of any person who at the passing of this Act shall by any of the titles hereinbefore specified preside in or hold any Court constituted or held under any of the Acts cited in either of the said schedules (A.) and (B.), to be the Judge of any County Court, shall not be deemed an appointment to hold a public office or employment within the meaning of an Act passed in the sixth year of the reign of Her present Majesty, intituled "An Act for the Amendment of the Law of Bankruptcy," so as to deprive him of any compensation to which he may be entitled under the said Act.

For supplying vacancies among the Judges of the County Court.

16. And be it enacted, that from time to time when any Judge appointed under this Act shall die, resign, or be removed, and the district for which he was appointed shall not be consolidated with any other district, another Judge shall be appointed who shall be a barrister at law who shall be of seven years standing, or who shall have practised as a barrister and special pleader for at least seven years, or who shall have been the County Clerk of the same County at the time of the passing of this Act; and every such appointment shall be made by the Lord Chancellor, or, where the whole of the district is within the duchy of Lancaster, by the Chancellor of the duchy of Lancaster.

Judges not to practise as barristers in their districts, except in certain cases.

17. And be it enacted, that no Judge appointed under this Act shall during his continuance as such Judge practise as a barrister within the district for which his Court is holden under this Act, except those barristers already appointed to preside in or hold the said Courts in Bath, Bristol, Liverpool, Manchester, Sheffield, Ecclesall, and Middlesex, and now practising in chambers as conveyancing counsel, who may continue such practice.

Judges of the County Court removable for inability, &c.

18. And be it enacted, that it shall be lawful for the said Lord Chancellor, or, where the whole of the district is within the duchy of Lancaster, for the Chancellor of the said duchy, if he shall think fit, to remove for inability or misbehaviour any such Judge already appointed or hereafter to be appointed.

Districts of Judges may be changed.

19. Provided always, and be it enacted, that it shall be lawful for the Lord Chancellor or Chancellor of the said duchy, within their several jurisdictions, to remove any Judge from any district to which he shall have been appointed, for the purpose of appointing him to any other district in which the salary of such Judge shall not be less than in the district from which he shall be so removed.

As to the appointment of a deputy to a Judge.

20. And be it enacted, that in case of illness or unavoidable absence, the cause whereof shall be entered on the minutes of the Court, it shall be lawful for the Judge appointed to hold any Court under this Act, or, in case of the inability of the Judge to make such appointment, for the Lord Chancellor, or where the whole of the district is within the duchy of Lancaster, for the Chancellor of the duchy, to appoint some other person, who shall be a Judge appointed under this Act, or who shall have practised as a barrister at law for at least three years, or as an attorney of one of Her Majesty's Superior Courts of Common Law for ten years, but not then residing or practising as an attorney in the district for which the Court is holden, to act as the deputy of such Judge during such illness or unavoidable absence; and it shall also be lawful for the Judge, with the approval of the said Lord Chancellor or Chancellor of the duchy, to appoint a deputy, who shall be a Judge appointed under this Act, or who shall have practised as a barrister at law for at least three years, to act for him for any time or times not exceeding in the whole two calendar months in any

consecutive period of twelve calendar months; and every deputy so appointed, during the time for which he shall be so appointed, shall have all the powers and privileges and perform all the duties of the Judge for whom he shall have been so appointed.

Judges may act as justices if in the commission of the peace.

21. And be it enacted, that every Judge of the County Court whose name shall be inserted by Her Majesty in any commission of the peace for the county, riding, or division of a county for which he is appointed Judge of the County Court may and shall act in the execution of the office of Justice of the Peace for the said county, riding, or division although he may not have such qualification by estate or interest in lands, tenements, and hereditaments as is required by law in the case of other persons being Justices of the Peace for a county, provided that he be not disqualified by law to act as a Justice of the Peace for any other cause or upon any other occasion than in respect of the want of such an estate or interest as aforesaid.

Judges, &c. appointed under this Act authorized to perform certain duties relating to matters depending in the Court of Chancery.

22. And be it enacted, that the Judges and other officers to be appointed under this Act shall be authorized and required to perform all such duties in or relating to any causes or matters depending in the High Court of Chancery, or before any Judge thereof, or before the Lord Chancellor in the exercise of any authority belonging to him, necessary or proper to be done in their respective districts, as the Lord Chancellor shall from time to time by any general order direct, and for this purpose, and subject to the general rules and orders of the said Court, shall have and exercise all such authorities as may be duly exercised by the commissioners or other officers of the said Court by whom such duties are now usually performed, and shall be entitled to receive the same fees and sums of money as are now payable in respect thereof, to be accounted for and applied by them as the other fees authorized by this Act to be received are directed to be accounted for and applied: provided always, that the future amount of such fees shall continue subject to the same authority for revising the same to which it is now subject.

Treasury to appoint Treasurers of Courts

23. And be it enacted, that the Commissioners of Her Majesty's Treasury of the United Kingdom of Great Britain and Ireland, shall appoint so many persons as they shall think

holden under this Act.

fit to be Treasurers of the Courts holden under this Act, and may remove any such Treasurer, if they shall see occasion so to do, and appoint another person in his room; and every such Treasurer shall be paid by salary in such manner and to such amount as the said Commissioners from time to time shall order; and the salary of every such Treasurer shall be paid out of the Consolidated Fund of the United Kingdom of Great Britain and Ireland: provided always, that the person appointed or acting as Treasurer before the passing of this Act to any Court holden under any Act cited in either of the said schedules (A.) and (B.), if not disqualified under this Act, shall be entitled to be the first Treasurer of the same Court respectively, when holden as a County Court under this Act, in every case in which a separate Treasurer shall be appointed exclusively for such Court, and shall in such case continue to exercise his office, subject to the power of removal provided in this Act.

Appointment of Clerks vested in Judges, subject to approval of Lord Chancellor.

24. And be it enacted, that for every Court under the authority of this Act there shall be a Clerk, who shall be an attorney of one of Her Majesty's Superior Courts of Common Law, and whom the Judge shall be empowered to appoint, subject to the approval of the Lord Chancellor, and, in case of inability or misbehaviour, to remove, subject to the like approval; and, until otherwise directed by Her Majesty, with the advice of her Privy Council, every such Clerk shall be paid by fees as hereinafter provided; and in cases requiring the same such assistant Clerks as may be necessary shall be provided and paid by the Clerk of the Court.

In populous districts Lord Chancellor may direct two Clerks to be appointed.

25. And be it enacted, that it shall be lawful for the Lord Chancellor, in populous districts in which it shall appear to him expedient, to direct that two persons shall be appointed to execute jointly the office of Clerk, under such regulations as to the division of the duties and emoluments of the said office as shall be from time to time made by order of Court in case of difference between them, each of such persons being qualified as is hereinbefore provided in the case of a single Clerk; and where under the provisions of any Act cited in either of the said schedules (A.) and (B.) more than one Clerk is now acting in and for the Court holden under such Act, the same

number of Clerks shall be continued, unless it shall seem expedient to the Lord Chancellor to order that such number be reduced.

In case of illness, &c., of Clerk a deputy may be appointed.

26. And be it enacted, that it shall be lawful for the Clerk of any such Court with the approval of the Judge, or, in case of inability of the Clerk to make such appointment, for the Judge to appoint from time to time a deputy, qualified to be appointed Clerk of the said Court, to act for the Clerk of the said Court at any time when he shall be prevented by illness or unavoidable absence from acting in such office, and to remove such deputy at his pleasure; and such deputy while acting under such appointment shall have the like powers and privileges, and be subject to the like provisions, duties, and penalties for misbehaviour, as if he were the Clerk of the said Court for the time being.

Duties of Clerks.

27. And be it enacted, that the Clerk of each Court, with such Assistant Clerks as aforesaid in cases requiring the same, shall issue all summonses, warrants, precepts, and writs of execution, and register all orders and judgments of the said Court, and keep an account of all proceedings of the Court, and shall take charge of and keep an account of all Court fees and fines payable or paid into Court, and of all moneys paid into and out of Court, and shall enter an account of all such fees, fines, and moneys in a book belonging to the Court, to be kept by him for that purpose, and shall from time to time, at such times as shall be directed by order of the Court, submit his accounts to be audited or settled by the Treasurer.

Offices of Clerk, Treasurer, and Bailiff not to be conjoined.

28. And be it enacted, that it shall not be lawful for the Clerk of any Court holden under this Act, or the partner of any such Clerk, or any person in the service or employment of such Clerk or his partner, to act as Treasurer or High Bailiff of the Court; or for the Treasurer, his partner or clerk, or any person in the service or employment of such Treasurer or his partner, to act as Clerk or High Bailiff; or for the High Bailiff, his partner or clerk, or any person in the service or employment of such High Bailiff or his partner, to act as Clerk or Treasurer of the Court.

Officers not to act as attorneys in the Court.

29. And be it enacted, that no Clerk, Treasurer, High Bailiff, or other officer of the Court shall, either by himself or

his partner, be directly or indirectly engaged as attorney or agent for any party in any proceeding in the said Court.

Penalty of 50*l.* on non-observance of the two previous enactments.

30. And be it enacted, that every person who, being the Clerk of any such Court, or the partner of such Clerk, or a person in the service or employment of any such Clerk or of his partner, shall accept the office of Treasurer or High Bailiff of such Court, or who, being the Treasurer of any such Court, or the partner of any such Treasurer, or a person in the service or employment of any such Treasurer or of his partner, shall accept the office of Clerk or High Bailiff in the execution of this Act, or who being the High Bailiff of such Court, or the partner of any such High Bailiff, or a person in the service or employment of any such High Bailiff or of his partner, shall accept the office of Clerk or Treasurer in the execution of this Act, and also every Clerk, Treasurer, High Bailiff, or other officer of any such Court who shall be, by himself or his partner, or in any way, directly or indirectly, concerned as attorney or agent for any party in any proceeding in the said Court, shall for every such offence forfeit and pay the sum of fifty pounds to any person who shall sue for the same in any of Her Majesty's Superior Courts of Record, by action of debt or on the case.

Appointment of Bailiffs.

31. And be it enacted, that for every such Court there shall be one or more High Bailiffs, whom the Judge shall be empowered by order of Court to appoint, and, in case of inability or misbehaviour, to remove by a like order; and every such High Bailiff shall be empowered, subject to the restrictions hereinafter contained, by any writing under his hand to appoint a sufficient number of able and fit persons, not exceeding such number as shall be from time to time allowed by the Judge, to be Bailiffs, to assist the said High Bailiff, and at his pleasure to dismiss all or any of them, and appoint others in their stead; and every Bailiff so appointed may also be suspended or dismissed by the Judge.

Provision for the High Bailiffs of Westminster and Southwark.

32. Provided always, and be it enacted, that, until Parliament shall otherwise direct, the High Bailiff of Westminster shall have the execution of all process issuing out of any of the said Courts the jurisdiction of which shall include the city and

liberty of Westminster or any part thereof, and shall be deemed the High Bailiff of such Courts; and the High Bailiff of Southwark shall have the execution of all process issuing out of any of the said Courts the jurisdiction of which shall include the borough of Southwark or any part thereof, and shall be deemed the High Bailiff of such last-mentioned Courts; and no other High Bailiff shall be appointed for such Courts.

Duties of the High Bailiffs, &c.

33. And be it enacted, that the said High Bailiffs or one of them shall attend every sitting of the Court, for such time as shall be required by the Judge, unless when their absence shall be allowed for reasonable cause by the Judge, and shall, by themselves or by the Bailiffs appointed to assist them as aforesaid, serve all the summonses and orders, and execute all the warrants, precepts, and writs, issued out of the Court; and the said High Bailiffs and Bailiffs shall in the execution of their duties conform to all such general rules as shall be from time to time made for regulating the proceedings of the Court, as hereinafter provided, and, subject thereunto, to the order and direction of the Judge; and the said High Bailiffs shall be entitled to receive all fees and sums of money allowed by this Act in the name of fees payable to the Bailiff, out of which they shall provide for the execution of the duties for which such fees are allowed, and for the payment of the Bailiffs and officers appointed to assist them, according to such scale of remuneration as shall be from time to time approved by the Judge; and every such High Bailiff shall be responsible for all the acts and defaults of himself and of the Bailiffs appointed to assist him, in like manner as the Sheriff of any county in England is responsible for the acts and defaults of himself and his officers.

Provision respecting Clerks and High Bailiffs of Courts under Acts cited in schedules (A.) and (B.)

34. Provided always, and be it enacted, that the persons holding the offices or performing the duties of Clerks and High Bailiffs in any Court holden under any Act cited in either of the said schedules (A.) and (B.) on the first day of June in this year, and who shall continue respectively to hold the same offices or to perform the same duties at the time when such Act shall be repealed under the provisions of this Act, whether or not qualified as hereinbefore provided, shall be entitled, if not disqualified under this Act, to be the first Clerks and High Bailiffs of the same Court when holden as a County Court

under this Act, and shall continue to execute their several offices, subject to the power of removal provided in this Act, except that the Clerks and High Bailiffs already appointed to any Court named in the said schedule (A) shall be removable only for such cause as would have warranted their removal under the Acts according to which their Court is now holden; and where, under the provisions of any of the said Acts, more than one Clerk was on the said first day of June, and shall be, when such Act shall be repealed, under the provisions of this Act, acting in and for any of the said Courts, or in and for any district or division of any Court, the same persons shall jointly execute the office of Clerk of the same Courts as aforesaid, under such regulations as to the division of the duties and emoluments of the said office as shall be from time to time made by order of Court, in case of difference between them: provided always, that if the Clerk of any Court cited in the said schedule (A.) shall, within one calendar month next after the repeal of the Act under which it is now holden, decline to accept the office of Clerk to the same Court as holden under this Act, it shall be lawful to the Commissioners of Her Majesty's Treasury, if they shall think fit, to take into consideration the special circumstances of each case, and to award such compensation to be paid to such Clerk as under the circumstances they shall think reasonable, in the manner herein provided in the case of persons whose emoluments will be diminished or taken away by this Act.

Provision respecting the officers of the two Courts at Bristol.

35. And whereas the jurisdiction of the Court of Conscience in the city of Bristol, under the provisions of an Act passed in the first year of the reign of Her Majesty, and cited in the schedule (A.) to this Act annexed, extends to the recovery of debts and demands not exceeding forty shillings; and the jurisdiction of the Court of Requests in the said city, under the provisions of an Act passed in the fifty-sixth year of the reign of King George the Third, and also cited in the said schedule (A.), extends to the recovery of debts and demands above forty shillings and not exceeding fifteen pounds; be it enacted, that in case the persons now holding the offices of Registrar and Clerk and Deputy Registrar of the said Court of Conscience shall continue to hold the same offices respectively when a Court shall be established in the said city of Bristol under the provisions of

this Act, they shall be entitled to hold the office and execute the duties of Clerks of any such Court in all causes and matters relating to debts, claims, and demands not exceeding forty shillings, under such regulations as to the division of the duties and emoluments of the said office as shall be from time to time made by order of Court, in case of difference between them; and in case the person now holding the office of Clerk of the said Court of Requests shall continue to hold the same office at the time when such Court shall be established, he shall be entitled to hold the office and execute the duties of Clerk of any such Court in all causes and matters relating to debts, claims, and demands exceeding forty shillings; and the said persons severally shall be removable only for such cause as would have warranted their removal under the several Acts according to which the said Courts are now holden.

Treasurers, Clerks, and High Bailiffs to give security.

36. And be it enacted, that the Treasurer, Clerk, and High Bailiff of every Court holden under this Act who may receive any moneys in the execution of his duty shall give security, for such sum and in such manner and form as the Commissioners of Her Majesty's Treasury from time to time shall order, for the due performance of their several offices, and for the due accounting for and payment of all moneys received by them under this Act, (or which they may become liable to pay for any misbehaviour in their office.)

Fees to be taken according to schedule (D.), and tables to be exhibited in conspicuous places.

37. And be it enacted, that there shall be payable on every proceeding in the Courts holden under this Act, to the Judges, Clerks, and High Bailiffs of the several Courts, such fees as are set down in the schedule marked (D.) to this Act annexed, or which shall be set down in any schedule of fees reduced or altered under the power hereinafter contained for that purpose, and none other; and a table of such fees shall be put up in some conspicuous place in the Court-house and in the Clerk's office; and the fees on every proceeding shall be paid in the first instance by the plaintiff or party on whose behalf such proceeding is to be had, on or before such proceeding, and in default payment thereof shall be enforced by order of the Judge by such ways and means as any debt or damage ordered to be paid by the Court can be recovered; and the fees upon executions shall be paid into Court at the time of the issue of the

warrant of execution, and shall be paid by the Clerk of the Court to the Bailiff upon the return of the warrant of execution, and not before: provided always, that it shall be lawful for one of Her Majesty's principal Secretaries of State, with the consent of the Commissioners of Her Majesty's Treasury, to lessen the amount of the fees to be taken in the Courts holden under this Act in such manner as to him shall seem fit, and again to increase such fees, so that the scale of fees given in the schedule to this Act be not in any case surpassed; and in every Court holden under this Act in which the fees allowed to be taken by the Judges, Clerks, or Bailiffs of the Court shall appear to be more than sufficient, it shall be lawful for the said Secretary of State to order that a certain part only of their fees shall be paid to them respectively, not exceeding, in the case of Judges and Clerks, the sums hereinafter mentioned as the greatest salaries to be by them respectively received; and in such case, and so long as such direction shall be in force, the amount of the residue of the fees shall be accounted for and paid to the Treasurer of the Court, and shall form part of the General Fund of the Court; but no such order shall be made to reduce the fees of any of the Judges, Clerks, and officers of any Court mentioned in the said schedule (A.) (so long as they shall be paid by fees) below the average amount of their fees or emoluments during the seven years next before the passing of this Act, with a reasonable increase for any increase of business which they may severally have to perform by reason of this Act.

Fees may be reduced.

Appropriation of surplus fees.

Compensation for persons whose rights or emoluments will be diminished.

88. And be it enacted, that every person who is entitled to any franchise, right of appointment, or office, under any of the Acts under which any Court mentioned in the said schedule (A.) is holden, and every person who shall have been entitled to any fees or salary for his services in the execution of any of the same Acts, or for the issue of any writs to the Sheriff out of the High Court of Chancery, and also every person who is entitled to any franchise or right of appointment to hold office in any Court in any district in which the County Court had not jurisdiction before the passing of this Act. and in which district a Court shall be established under the provisions of this Act, and also every person holding any office in any such last-mentioned Court whose franchise or right of appointment or office shall be

affected, abolished, or taken away, or whose emoluments shall be diminished or taken away under the operation of this Act, shall be entitled to make a claim for compensation to the Commissioners of Her Majesty's Treasury, within six calendar months after the passing of this Act, or after the alteration of such Court; and it shall be lawful for the said Commissioners, in such manner as they shall think proper, to inquire what was the nature of the franchise or right of appointment, and what was the tenure of any such office, and what were the lawful fees and emoluments in respect of which such compensation should be allowed; and the Commissioners in each case shall award such gross or yearly sum and for such time as they shall think just to be awarded upon consideration of the special circumstances of each case; and all such compensations shall be paid out of the Consolidated Fund of the United Kingdom of Great Britain and Ireland: provided always, that if any person holding any office in any of the said Courts shall be appointed after the passing of this Act to any public office or employment, the payment of the compensation awarded to him under this Act, so long as he shall continue to receive the salary or emoluments of such office of employment, shall be suspended if the amount of such salary or emoluments is greater than the amount of such compensation, or if not, shall be diminished by the amount of such salary or emoluments: provided also, that nothing in this Act contained shall be deemed to entitle any person to compensation for the loss or diminution of the profits of any office to which he shall have been appointed under any Act containing a provision, either that he is not to be entitled to compensation for the loss or diminution of the profits of his office, or that such Act should cease on or within a limited time after the passing of any general Act for the recovery of small debts, or under the provisions of either of the said Acts of the eighth year of Her Majesty, and of the ninth year of Her Majesty.

Officers of Courts may be paid by salaries instead of fees.

39. And be it enacted, that it shall be lawful for Her Majesty, with the advice of her Privy Council, to order that the Judges, Clerks, Bailiffs, and officers of the Courts holden under this Act, or any of them, shall be paid by salaries instead of fees, or in any manner other than is provided by this Act; and if Her Majesty shall be pleased, with the advice aforesaid,

If Court abolished, no

compensation allowed except in certain cases.

to make such order, or to order that any such Court shall be abolished, or that the district for which any such Court is holden shall be consolidated with any other district, or if any Act shall be passed whereby it shall be provided that the said Courts or any of them shall be abolished, or otherwise constituted than is provided by this Act, no such Clerk or Bailiff, nor any Judge, County Clerk, Treasurer, or other officer of any such Court, shall be entitled to any compensation on account of ceasing to hold his office, or to receive the fees allowed by this Act, or on account of his emoluments being affected by such abolition or alteration, unless he shall have presided or acted as Judge, Assessor, County Clerk, Treasurer. Clerk, Bailiff, or other officer, before the passing of this Act, in any of the Courts mentioned in the schedule (A.) to this Act annexed, in which case he shall be entitled to compensation for the loss of his fees or emoluments, in like manner and subject to the same regulations as he would have been entitled thereto under the provisions herein contained in case he had been deprived of any fees or emoluments by reason of the passing of this Act; and in such case all sums payable in the name of fees to such officers of the Court as shall be paid by salaries shall be paid from time to time to the Treasurer of the Court, who shall pay the said several salaries out of the proceeds of such fees, and the surplus shall form part of the general fund of the Court; and whenever the net amount of the fees shall not be sufficient to pay the said several salaries, the deficiency shall be made good and paid out of the Consolidated Fund of Great Britain and Ireland.

Limiting amount of salaries to be paid under this Act.

40. And be it enacted, that the greatest salaries to be received in any case by the Judges and Clerks of the Courts holden under this Act shall be twelve hundred pounds by a Judge, and six hundred pounds by a Clerk, exclusive of all salaries to his clerks employed in the business of the Court, and other expenses incidental to his office, unless in the case of any Judge or Clerk of any such Court acting in the same capacity before the passing of this Act in any Court mentioned in the said schedule (A.), whose salaries shall not be limited to any sum less than the average amount of the fees and emoluments of their respective offices during the seven years next before the passing of this Act : provided always, that it shall be lawful

for the Commissioners of Her Majesty's Treasury to allow in each case such sum as they shall in each case deem reasonable to defray travelling expenses, with reference to the size and circumstances of each district.

Fees and fines to be accounted for to Treasurer.

41. And be it enacted, that the Clerk of every Court holden under this Act, from time to time as often as he shall be required so to do by the Treasurer or Judge of the Court, and in such form as the Treasurer or Judge shall require, shall deliver to the Treasurer a full account in writing of the fees received in that Court under the authority of this Act, and a like account of all fines levied by the Court, and of the expenses of levying the same, and shall pay over to the Treasurer, quarterly or oftener in every year, by order of the Court, the moneys remaining in his hands over and above his own fees, and such balance as he shall be allowed by order of the Court to retain for the current expenditure of the Court.

Clerk's accounts to be audited and settled by Treasurers.

42. And be it enacted, that the Treasurer of every Court holden under this Act shall from time to time, quarterly or oftener, as shall be directed by order of the Court, audit and settle the accounts of the Clerk and other officers of the Court, and shall receive the balance of the various moneys which such Clerk and other officers shall have received under this Act, and shall pay over to the Judge of the Court the amount of his fees, and make all such other payments as it shall be requisite to make thereout in accordance with the provisions of this Act, and shall from time to time pay the balance remaining in his hands, or so much thereof as he shall be directed to pay, into such bank, or otherwise as shall be directed by the Commissioners of Her Majesty's Treasury.

Treasurer of the Court to render accounts to Audit Board.

43. And be it enacted, that the Treasurer of every Court holden under this Act shall once in every year, and oftener if required, on such day as the Commissioners of Her Majesty's Treasury from time to time shall appoint, render to the Commissioners for auditing the public accounts of Great Britain a true account in writing of all moneys received and of all moneys disbursed by him on account of every Court holden under this Act of which he is Treasurer, during the period comprised in such account, in such form, and with such particulars of receipt

and disbursement, or otherwise, as the said Commissioners of Audit shall from time to time require.

Commissioners of Treasury to direct how balances shall be applied.

44. And be it enacted, that the Commissioners of Her Majesty's Treasury shall from time to time make such rules as to them shall seem meet for securing the balances and other sums of money in the hands of any officers of every Court holden under this Act, and for the due accounting for and application of all such balances and other sums of money.

Accounts of Treasurers to be audited under powers of 25 Geo. 3, c. 52.

45. And be it enacted, that the accounts to be kept by the several Treasurers on account of the said Courts shall be examined and audited by the Commissioners for auditing the public accounts of Great Britain, under the powers vested in them under an Act of the twenty-fifth year of the reign of King George the Third, intituled "An Act for the better examining and auditing the Public Accounts of this Kingdom," and under any Act now in force, or otherwise howsoever, except so far as the same are varied by this Act.

Clerk to send to Commissioners of Audit an account of all sums paid by him to Treasurer.

46. And be it enacted, that the Clerk of every such Court shall once in every year, and oftener if required, on such day as shall be appointed by the Commissioners of Her Majesty's Treasury, make out and send to the said Commissioners of Audit an account of all sums paid over by him to the Treasurer of the Court, including all unclaimed balances carried to the account of the general fund, as hereinafter provided; and every such account, duly vouched by receipts given under the hand of the Treasurer, shall be a voucher to charge the Treasurer in his account before the said Commissioners of Audit.

Accounts when audited to be sent to Treasury.

47. And be it enacted, that it shall not be necessary to declare the accounts of the said Treasurers before the Chancellor of the Exchequer, but the said Commissioners of Audit shall transmit a statement of every account examined and audited by them under the authority of this Act to the Lord High Treasurer, or the Commissioners of Her Majesty's Treasury for the time being, who, having considered such statement, shall return the same to the Commissioners of Audit, together with his or their warrant, directing them to make up and pass the account, either conformably to the statement, or with such variations as he or they may deem just and reasonable; and the account

having been made up pursuant to such directions, and signed by two or more of the said Commissioners for auditing the Public Accounts, shall remain deposited in the Audit Office, and shall have the same force and validity, and be as efficient in law for all purposes whatsoever, as if the same had been declared according to the usual course by the Chancellor of the Exchequer; and the said Commissioners shall thereupon, as soon as conveniently may be, cause such or the like certificate thereof, in the nature of a quietus, to be made out and delivered, as is now practised by them with regard to declared accounts, and which shall be equally valid and effectual to discharge the Accountants, and to all other intents and purposes.

Treasurers, with approval of Secretary of State, to provide Court-houses, offices, &c.

48. And be it enacted, that the Treasurer of any Court holden under this Act for which a Court-house and offices, with necessary appurtenances, shall not have been already provided, or where such Court-house and offices are inconvenient or insufficient, shall, as soon as conveniently may be, with the approval of one of Her Majesty's principal Secretaries of State, build, purchase, hire, or otherwise provide messuages and lands, with all necessary appurtenances, fit for holding the Court therein, and for the offices necessary for carrying on the business of the said Court, or, instead of providing separate buildings, may, with the like approval, contract with any person, being the owner of or having the control and management of any county or town hall or other building, for the use and occupation thereof, or of so much thereof as may be needed for the purposes of this Act, and subject to such annual rent, and to such conditions as to the repairs, alterations, or improvements of such hall or building, as may be agreed upon; and all lands, messuages, and other real and personal estates and effects belonging to the Court shall vest in the Treasurer for the time being, and in his successors in that office, in trust for the purposes of this Act.

Where common gaols are inconvenient, prisons belonging to Courts under Acts cited in schedules (A.) and (B.) may be used.

49. And be it enacted, that it shall be lawful for any Court holden under this Act, with the approval of one of Her Majesty's principal Secretaries of State, to use as a prison for the purposes of this Act any prison now belonging to any Court holden under any of the Acts cited in the said schedules (A.) and (B.), in all cases where it shall appear to the said Secretary of State that the common gaol or house of correction of the county,

district, or place in which the Court is established is inconveniently situated, or is not applicable for the use of the said Courts; and whenever any such prison shall be so allowed to be used it shall be deemed one of the common gaols of the county for which it shall be used, as if it had been provided, after presentment of the insufficiency of one common gaol for such county, under the provisions of an Act passed in the sixth year of the reign of Her Majesty, intituled "An Act to amend the Laws concerning Prisons," or where such prison shall be situated within a borough having a separate court of sessions of the peace, it shall be deemed a house of correction for such borough.

5 & 6 Vict. c. 98.

Power for purchasing land.

50. And be it declared and enacted, that the provisions of the Lands Clauses Consolidation Act, 1845, shall apply to the purchase of lands by the Treasurer of any such Court for the purposes of this Act, except so much thereof as relates to the purchase and taking of lands otherwise than by agreement; and in construing the said Act the Treasurer acting with the approval of one of Her Majesty's principal Secretaries of State shall be deemed the promoter of the undertaking for which such lands are required.

Treasurer empowered to borrow money for the purposes of this Act.

51. And be it enacted, that for the purpose of defraying the expenses of building, purchasing, or providing any messuages and lands for the purposes aforesaid, it shall be lawful for the said Treasurer to borrow and take up at interest so much money as he shall find to be necessary, the amount thereof, and the rate of interest in each case, being first allowed by the said Commissioners of Her Majesty's Treasury; and the Treasurer may enter into and execute such securities as may be required, and the securities so entered into shall be binding on him and his successors in the office of Treasurer for securing repayment of the moneys borrowed, with interest for the same, out of the general fund hereinafter mentioned, and shall enter in a book belonging to the Court, to be kept by him for that purpose, the names of the several persons by whom any money shall be advanced for the purpose aforesaid, in the order in which the same shall be advanced, and the moneys so borrowed shall be paid off in the same order.

A general fund to be raised for

52. And be it enacted, that for raising a fund for providing a Court-house and offices, and for paying off any moneys which

may be borrowed as aforesaid, and the interest due in respect thereof, the Clerk of every Court holden under the authority of this act, in which and while it shall be necessary to raise such fund, shall demand and receive from the plaintiff in any suit brought in that court the sum of sixpence when the debt or damage claimed shall exceed twenty shillings and shall not exceed forty shillings, and for every claim exceeding forty shillings one twentieth part thereof, neglecting any sum less than sixpence in estimating such twentieth part, or such other sum in either case, not exceeding the rates hereinbefore mentioned, as one of Her Majesty's Principal Secretaries of State, with the consent of the Commissioners of Her Majesty's Treasury, from time to time shall order, which sum, if not paid in the first instance by the plaintiff upon suit brought in the court, may be deducted from the sum recovered for the plaintiff, and shall be considered as costs in the cause; and the Clerk of the Court shall keep an account of all moneys so paid to him, and shall pay over the amount from time to time to the Treasurer of the Court, and the amount thereof shall accumulate, to form a fund to be called "The General Fund of the County Court of at ," and shall be applied in the first place toward paying the interest of the several sums so borrowed, and in the second place toward paying the rent and other expenses necessarily incurred in holding the court, and in the third place toward paying off the several principal sums borrowed, in the order in which they were borrowed, and in the fourth place toward defraying the other expenses herein charged on the said general fund, in such manner as the Judge, with the approval of one of Her Majesty's Principal Secretaries of State, shall direct; and the surplus which shall from time to time accumulate, after providing for all the said expenses, shall be paid over to the credit of the Consolidated Fund of the United Kingdom of Great Britain and Ireland; subject, nevertheless, to any charge which may arise from any future deficiency of the same fund.

paying off money borrowed.

53. And be it enacted, that, as soon as a Court shall have been established in any district under this act, all messuages lands, and tenements, and all real estates and effects, vested in or belonging to the Commissioners, Clerks, Treasurers, Trustees, or other officers of any of the Courts mentioned in the said

Property of Courts in Schedules (A.) and (B.) to vest in the Treasurer of the County Court.

Schedules (A.) and (B.), which were holden in trust for the purposes of such Court, shall vest in or belong to the Treasurer of the County Court for the time being, and his successors in the said office, in trust for the purposes of this Act, for the like estate and interest, and subject to all the covenants, conditions, and agreements on which the same were respectively holden; and the said Commissioners, Clerks, Treasurers, Trustees, and other officers, their heirs, executors, and administrators, shall be freed and discharged from all such covenants, conditions, and agreements, and from the consequences of their being unable to fulfil any covenants or agreements into which any of them may have lawfully entered in execution of the provisions of any of the said Acts, on or before the repeal of such Act, with respect to their estate or interest in such messuages, lands, tenements, real and personal estates and effects in consequence of the vesting thereof in the said Treasurer; and all moneys and securities for money, and other property and effects of any kind whatsoever, in the hands of the Commissioners, Clerks, Treasurers, Trustees, or other officers of any such Court, shall be paid, transferred, and delivered to the said Treasurer, or to such person as he shall appoint to receive the same, and shall be applied in discharging all claims and demands to which the same were liable in the hands of such Commissioners, Clerks, Treasurers, Trustees, or other officers, and the residue thereof shall be applied to the same purposes to which the general fund is applicable.

Provisions for outstanding liabilities.

54. And be it enacted, that it shall be lawful for the Treasurer of the County Court, with the approval of the Commissioners of Her Majesty's Treasury, and upon the certificate of the expediency thereof under the hand of the Judge, to sell and dispose of all messuages, lands, and tenements which may be vested in him under the provisions of this Act which shall not be needed for the purposes of this Act, or which the Treasurers shall think ought to be sold, for the purpose of better enabling him to discharge any just debts on account of any court of which the constitution shall be altered under this Act, or to provide other and more convenient buildings for holding a County Court; and the proceeds of all such sales, and also all moneys and securities for money which shall be paid, transferred, or delivered

to him on account of any such court as aforesaid, shall be applied towards discharging such debts; and in every case in which at the time of the alteration of the constitution of the Court there shall be any just debts owing on account of any such Court, or any salaries or annuities legally or equitably chargeable upon or payable out of the fees of such Court, or out of any fund to which such fees are payable, over and above what may be discharged by the moneys and effects so paid, transferred, or delivered to the Treasurer on account of such Court, and over and above the proceeds of the sale of any such messuages, lands, and tenements, in case the same or any part thereof shall be sold, such debts, salaries, and annuities shall be treated as if they were debts which had been incurred for the purpose of providing a Court-house for holding the County Court for the district in which the place is included where such Court was holden, and shall be liquidated out of the general fund hereinbefore mentioned, if the same shall be sufficient for that purpose, and any deficiency therein shall be paid out of the Consolidated Fund of the United Kingdom of Great Britain and Ireland.

Clerks to have the charge of the Court-houses, &c., and to appoint and dismiss servants, &c.

55. And be it enacted, that the Clerk of every Court shall have the care of the Court-house and offices of the Court, and shall appoint and have power to dismiss the necessary servants for taking charge of such Court-house and offices, at such salaries as shall be from time to time authorized by the Judge, with the consent of the Commissioners of Her Majesty's Treasury; and the Clerk of the Court, under the direction of the said Commissioners, and subject to such regulations as they may require to be enforced, shall make all necessary contracts or otherwise provide for repairing and furnishing, and for cleaning, lighting, and warming, the said Court-house and offices, and for supplying the said Court and offices with law and office books and stationery, and for defraying all other necessary expenses not otherwise provided for incident to the holding of the said Court, and the charge of the Court-house and offices, and expenses thereby incurred, shall be paid out of the general fund of the court: provided always, that the Treasurer or Clerk of any Court, or the partner of any such Treasurer or Clerk, or any person in the service or employment of any such Treasurer

or Clerk, shall not be directly or indirectly concerned or interested in any such contract, or in supplying any articles for the use of the said Courts and offices: provided also, that no payment for any such charge shall be allowed in the Clerk's accounts until allowed under the hand of the Judge.

Judge to hold the Court where Her Majesty shall direct.

56. And be it enacted, that the Judge of each district shall attend and hold the County Court at each place where Her Majesty shall have ordered that the County Court shall be holden within his district at such times as he shall appoint for that purpose, so that a Court shall be holden in every such place once at least in every calendar month, or such other interval as one of Her Majesty's Principal Secretaries of State shall in each case order; and notice of the days on which the Court will be holden shall be put up in some conspicuous place in the Court-house and in the office of the Clerk of the Court, and no other notice thereof shall be needed; and whenever any day so appointed for holding the Court shall be altered, notice of such intended alteration, and of the time when it will take effect shall be put up in some conspicuous place in the Court-house and in the Clerk's office.

Notices for holding Courts to be put up in a conspicuous place.

Process of the Court to be under seal.

57. And be it enacted, that for every Court holden under this Act there shall be made a seal of the Court, and all summonses and other process issuing out of the said court shall be sealed or stamped with the seal of the Court; and every person who shall forge the seal or any process of the Court, or who shall serve or enforce any such forged process, knowing the same to be forged, or deliver or cause to be delivered to any person any paper falsely purporting to be a copy of any summons or other process of the said Court, knowing the same to be false, or who shall act or profess to act under any false colour or pretence of the process of the said Court, shall be guilty of felony.

Jurisdiction of the Court.

58. And be it enacted, that all pleas of personal actions, where the debt or damage claimed is not more than twenty pounds, whether on balance of account or otherwise, may be holden in the County Court, without writ; and all such actions brought in the said Court shall be heard and determined in a summary way in a Court constituted under this Act, and according to the provisions of this Act; provided always, that

the Court shall not have cognizance of any action of ejectment, or in which the title to any corporeal or incorporeal hereditaments, or to any toll, fair, market, or franchise, shall be in question, or in which the validity of any devise, bequest, or limitation under any will or settlement may be disputed, or for any malicious prosecution, or for any libel or slander, or for criminal conversation, or for seduction, or breach of promise of marriage.

59. And be it enacted, that, on the application of any person desirous to bring a suit under this Act, the Clerk of the Court shall enter in a book to be kept for this purpose in his office a plaint in writing, stating the names and the last known places of abode of the parties, and the substance of the action intended to be brought, every one of which plaints shall be numbered in every year according to the order in which it shall be entered; and thereupon a summons, stating the substance of the action, and bearing the number of the plaint on the margin thereof, shall be issued under the seal of the Court according to such form, and be served on the defendant so many days before the day on which the Court shall be holden at which the cause is to be tried, as shall be directed by the rules made for regulating the practice of the Court, as hereinafter provided; and delivery of such summons to the defendant, or in such other manner as shall be specified in the rules of practice, shall be deemed good service; and no misnomer or inaccurate description of any person or place in any such plaint or summons shall vitiate the same, so that the person or place be therein described so as to be commonly known.

Suits to be by plaint.

60. And be it enacted, that such summons may issue in any district in which the defendant or one of the defendants shall dwell or carry on his business at the time of the action brought; or, by leave of the Court for the district in which the defendant or one of the defendants shall have dwelt or carried on his business, at some time within six calendar months next before the time of the action brought, or in which the cause of action arose, such summons may issue in either of such last-mentioned Courts.

Summons may issue, though cause of action may not arise in the district.

61. And be it enacted, that any summons or other process which under this Act shall be required to be served out of the

Processes out of dis-

trict of Court may be served by Bailiff of any other Court.

district of the Court from which the same shall have issued may be served by the Bailiff of any Court holden under this Act in any part of England, and such service shall be as valid as if the same had been made by the Bailiff of the Court out of which such summons or other process shall have issued within the jurisdiction of the Court for which he acts.

Proof of service of process out of the district, or in the absence of the Bailiff.

62. And be it enacted, that service of any summons or other process of the Court which shall require to be served out of the district of the Court may be proved by affidavit, purporting to be sworn before any Judge of a County Court, or before a Master Extraordinary in Chancery, or any person now authorized by law to take affidavits; and the fee for taking such affidavit shall not be more than one shilling, and shall be costs in the cause; and in every case of the unavoidable absence of the Bailiff by whom any summons or other process of the Court shall have been served the service of such summons or other process may be proved, if the Judge shall think fit, in the same manner as a summons served out of the district of the Court, but without additional charge to either of the parties to the suit.

Demands not to be divided for the purpose of bringing two or more suits.

63. And be it enacted, that it shall not be lawful for any plaintiff to divide any cause of action for the purpose of bringing two or more suits in any of the said Courts, but any plaintiff having cause of action for more than twenty pounds, for which a plaint might be entered under this Act if not for more than twenty pounds, may abandon the excess, and thereupon the plaintiff shall, on proving his case, recover to an amount not exceeding twenty pounds; and the judgment of the Court upon such plaint shall be in full discharge of all demands in respect of such cause of action, and entry of the judgment shall be made accordingly.

Minors may sue for wages.

64. And be it enacted, that it shall be lawful for any person under the age of twenty-one years to prosecute any suit in any Court holden under this Act for any sum of money not greater than twenty pounds which may be due to him for wages or piecework, or for work as a servant, in the same manner as if he were of full age.

Cases of partnership

65. And be it enacted, that the jurisdiction of the County Court under this Act shall extend to the recovery of any

demand, not exceeding the sum of twenty pounds, which is the whole or part of the unliquidated balance of a partnership account, or the amount or part of the amount of a distributive share under an intestacy, or of any legacy under a will. and intestacy.

Executors may sue and be sued.

66. And be it enacted, that it shall be lawful for any executor or administrator to sue and be sued in any Court holden under this Act in like manner as if he were a party in his own right and judgment, and execution shall be such as in the like case would be given or issued in any superior Court.

No privilege allowed.

67. And be it enacted, that no privilege except as hereinafter excepted, shall be allowed to any person to exempt him from the jurisdiction of any Court holden under this Act.

One of several persons liable may be sued.

68. And be it enacted, that where any plaintiff shall have any demand recoverable under this Act against two or more persons jointly answerable, it shall be sufficient if any of such persons be served with process, and judgment may be obtained and execution issued against the person or persons so served, notwithstanding that others jointly liable may not have been served or sued, or may not be within the jurisdiction of the Court; and every such person against whom judgment shall have been obtained under this Act, and who shall have satisfied such judgment, shall be entitled to demand and recover in the County Court under this Act contribution from any other person jointly liable with him.

Judge alone to determine all questions unless a Jury be summoned.

69. And be it enacted, that the Judge of the County Court shall be the sole Judge in all actions brought in the said Court and shall determine all questions as well of fact as of law, unless a Jury shall be summoned as hereinafter mentioned; and no suitors shall in any case be summoned to hold or have any jurisdiction in any Court holden under this Act.

Actions may be tried by a Jury when parties require it.

70. And be it enacted, that in all actions where the amount claimed shall exceed five pounds it shall be lawful for the plaintiff or defendant to require a Jury to be summoned to try the said action; and in all actions where the amount claimed shall not exceed five pounds it shall be lawful for the Judge, in his discretion, on the application of either of the parties, to order that such action be tried by a Jury; and in every case such Jury shall be summoned according to the provisions herein-

after contained: provided always, that the party requiring a Jury to be summoned shall give to the Clerk of the Court, or leave at his office, such notice thereof as shall be directed by the rules made for regulating the practice of the Court as hereinafter provided; and the said Clerk shall cause notice of such demand of a Jury, made either by the plaintiff or defendant, to be communicated to the other party to the said action, either by post, or by causing the same to be delivered at his usual place of abode or business; but it shall not be necessary for either party to prove on the trial that such notice was communicated to the other party by the Clerk.

Party requiring Jury to make a deposit.

71. And be it enacted, that every party requiring any Jury to be summoned shall at the time of giving the said notice, and before he shall be entitled to have such Jury summoned, pay to the Clerk of the Court the sum of five shillings for payment of the Jury, and such sum shall be considered as costs in the cause, unless otherwise ordered by the Judge.

Who shall be jurors.

72. And be it enacted, that the Sheriff of every County, and the High Bailiffs of Westminster and Southwark, shall cause to be delivered to the Clerk of the Court a list of persons qualified and liable to serve as Jurors in the Courts of Assize and Nisi Prius for their county, city, and borough respectively, within fourteen days from the receipt of the Jury book from the Clerk of the Peace of the county or other officer, each list containing only the names of persons residing within the jurisdiction of the Court. for which list the said Sheriffs and High Bailiffs shall be entitled to receive out of the general fund of the Court a fee after the rate of twopence for every folio of seventy-two words; and whenever a Jury shall be required the Clerk of the Court shall cause so many of the persons named in the list as shall be needed in the opinion of the Judge to be summoned to attend the Court at a time and place to be mentioned in the summons, and shall administer or cause to be administered to such of them as shall be impanelled to try any cause or causes an oath to give true verdicts according to the evidence; and the persons so summoned shall attend at the Court at the time mentioned in the summons, and in default of attendance shall forfeit such sum of money as the Judge shall direct, not being more than five pounds for each default; and the delivery of such

summons to the person whose attendance is required on such Jury, or delivery thereof to his wife or servant, or any inmate at his usual place of abode, trading or dealing, shall be deemed good service: provided always, that no person shall be summoned or compelled to serve on such Jury more than twice within one year, or who shall have been summoned and shall have attended upon any Jury at the Assizes, or any Court of Nisi Prius, or at the Central Criminal Court for the same county, within six calendar months next before the delivery of such summons.

Number of the Jury.

73. And be it enacted, that whenever there are any jury trials five Jurymen shall be impanelled and sworn, as occasion shall require, to give their verdicts in the causes which shall be brought before them in the said Court, and being once sworn shall not need to be re-sworn in each trial; and either of the parties to any such cause shall be entitled to his lawful challenge against all or any of the said Jurors in like manner as he would be entitled in any Superior Court; and the Jurymen so sworn shall be required to give an unanimous verdict.

Proceedings on hearing the plaint.

74. And be it enacted, that on the day in that behalf named in the summons the plaintiff shall appear, and thereupon the defendant shall be required to appear to answer such plaint; and on answer being made in Court the Judge shall proceed in a summary way to try the cause, and give judgment, without further pleading or formal joinder of issue.

No evidence to be given that is not in summons.

75. And be it enacted, that no evidence shall be given by the plaintiff on the trial of any such cause as aforesaid of any demand or cause of action, except such as shall be stated in the summons hereby directed to be issued.

Notices to be given to the Clerk of special defences, who shall communicate the same to the plaintiff.

76. And be it enacted, that no defendant in any Court holden under this Act shall be allowed to set off any debt or demand claimed or recoverable by him from the plaintiff, or to set up by way of defence and to claim and have the benefit of infancy, coverture, or any Statute of Limitations, or of his discharge under any statute relating to bankrupts, or any Act for relief of Insolvent Debtors, without the consent of the plaintiff, unless such notice thereof as shall be directed by the rules made for regulating the practice of the Court shall have been given to the Clerk of the Court; and in every case in which the practice

of the Court shall require such notice to be given the Clerk of the Court shall, as soon as conveniently may be, after receiving such notice, communicate the same to the plaintiff by the post, or by causing the same to be delivered at his usual place of abode or business; but it shall not be necessary for the defendant to prove on the trial that such notice was communicated to the plaintiff by the Clerk.

Suits may be settled by arbitration.

77. And be it enacted, that the Judge may in any case, with the consent of both parties to the suit, order the same, with or without other matters within the jurisdiction of the Court in dispute between such parties, to be referred to arbitration, to such person or persons, and in such manner, and on such terms as he shall think reasonable and just; and such reference shall not be revocable by either party except by consent of the Judge; and the award of the arbitrator or arbitrators or umpire shall be entered as the judgment in the cause, and shall be as binding and effectual to all intents as if given by the Judge; provided that the Judge may, if he think fit, on application to him at the first Court held after the expiration of one week after the entry of such award, set aside any such award so given as aforesaid, or may, with the consent of both parties aforesaid, revoke the reference, or order another reference to be made in the manner aforesaid.

Forms of procedure in Courts to be framed by the Judges.

78. And be it enacted, that five of the Judges of the Superior Courts of common law at Westminster, including the Lord Chief Justice of the Court of Queen's Bench, the Lord Chief Justice of the Court of Common Pleas, and the Lord Chief Baron of the Court of Exchequer, or one of the said chiefs at the least, shall have power to make and issue all the general rules for regulating the practice and proceedings of the County Courts holden under this Act, and also to frame forms for every proceeding in the said Courts for which they shall think it necessary that a form be provided, and also for keeping all books, entries and accounts to be kept by the Clerks of the said Courts, and from time to time to alter any such rule or form; and the rules so made, and the forms so framed, shall be observed and used in all the Courts holden under this Act; and in any case not expressly provided for herein, or by the said rules, the general principles of practice in the Superior Courts

of common law may be adopted and applied, at the discretion of the Judges, to actions and proceedings in their several Courts.

Proceedings if plaintiff does not appear or prove his case.

79. And be it enacted, that if upon the day of the return of any summons, or at any continuation or adjournment of the said Court, or of the cause for which the said summons shall have been issued, the plaintiff shall not appear, the cause shall be struck out; and if he shall appear, but shall not make proof of his demand to the satisfaction of the Court, it shall be lawful for the Judge to nonsuit the plaintiff, or to give judgment for the defendant, and in either case, where the defendant shall appear and shall not admit the demand, to award to the defendant, by way of costs and satisfaction for his trouble and attendance, such sum as the Judge in his discretion shall think fit, and such sum shall be recoverable from the plaintiff by such ways and means as any debt or damage ordered to be paid by the same Court can be recovered: provided always, that if the plaintiff shall not appear when called upon, and the defendant, or some one duly authorized on his behalf, shall appear, and admit the cause of action to the full amount claimed, and pay the fees payable in the first instance by the plaintiff, the Court, if it shall think fit, may proceed to give judgment as if the plaintiff had appeared.

Proceedings if the defendant does not appear.

80. And be it enacted, that if on the day so named in the summons, or at any continuation or adjournment of the Court or cause in which the summons was issued, the defendant shall not appear, or sufficiently excuse his absence, or shall neglect to answer when called in Court, the Judge, upon due proof of service of the summons, may proceed to the hearing or trial of the cause on the part of the plaintiff only, and the judgment thereupon shall be as valid as if both parties had attended: provided always, that the Judge in any such case, at the same or any subsequent Court, may set aside any judgment so given in the absence of the defendant, and the execution thereupon, and may grant a new trial of the cause, upon such terms, if any, as to payment of costs, giving security for debt or costs, or such other terms as he may think fit, on sufficient cause shown to him for that purpose.

Judge may grant time.

81. And be it enacted, that the Judge may in any case make orders for granting time to the plaintiff or defendant to proceed

in the prosecution or defence of the suit, and also may from time to time adjourn any Court, or the hearing or further hearing of any cause, in such manner as to the Judge may seem fit.

Defendant may pay money into Court.

82. And be it enacted, that it shall be lawful for the defendant in any action brought under this Act, within such time as shall be directed by the rules made for regulating the practice of the Court, to pay into Court such sum of money as he shall think a full satisfaction for the demand of the plaintiff, together with the costs incurred by the plaintiff up to the time of such payment; and notice of such payment shall be communicated by the Clerk of the Court to the plaintiff by post, or by causing the same to be delivered at his usual place of abode or business; and the said sum of money shall be paid to the plaintiff; but if he shall elect to proceed, and if the plaintiff shall recover no further sum in the action than shall have been so paid into Court, the plaintiff shall pay to the defendant the costs incurred by him in the said action after such payment; and such costs shall be settled by the Court, and an order shall thereupon be made by the Court for the payment of such costs by the plaintiff.

Notice of such payment to be given to plaintiff.

Parties and others may be examined.

83. And be it enacted, that on the hearing or trial of any action or on any other proceeding under this Act the parties thereto, their wives and all other persons, may be examined, either on behalf of the plaintiff or defendant, upon oath, or solemn affirmation in those cases in which persons are by law allowed to make affirmation instead of taking an oath, to be administered by the proper officer of the Court.

Persons giving false evidence guilty of perjury.

84. And be it enacted, that every person who in any examination upon oath or solemn affirmation before any Judge of the County Court shall wilfully and corruptly give false evidence shall be deemed guilty of perjury.

Summonses to witnesses.

85. And be it enacted, that either of the parties to the suit or any other proceeding under this Act may obtain, at the office of the Clerk of the Court, summonses to witnesses, to be served by one of the Bailiffs of the Court, with or without a clause requiring the production of books, deeds, papers, and writings in their possession or control, and in any such summons any number of names may be inserted.

86. And be it enacted, that every person on whom any such summons shall have been served, either personally or in such other manner as shall be directed by the general rules of practice of the Courts, and to whom at the same time payment or a tender of payment of his expenses shall have been made on such scale of allowance as shall be from time to time settled by the general rules or practice of the Court, and who shall refuse or neglect, without sufficient cause to appear, or to produce any books, papers, or writings required by such summons to be produced, and also every person present in Court who shall be required to give evidence, and who shall refuse to be sworn and give evidence, shall forfeit and pay such fine, not exceeding ten pounds, as the Judge shall set on him; and the whole or any part of such fine, in the discretion of the Judge, after deducting the costs, shall be applicable toward indemnifying the party injured by such refusal or neglect, and the remainder thereof shall form part of the general fund of the Court in which the fine was imposed.

Penalty on witnesses neglecting summons.

87. And be it enacted, that payment of any fine imposed by any Court under the authority of this Act may be enforced upon the order of the Judge in like manner as payment of any debt adjudged in the said Court, and shall be accounted for as herein provided.

Fines how to be enforced and accounted for.

88. And be it enacted, that all the costs of any action or proceeding in the Court, not herein otherwise provided for, shall be paid by or apportioned between the parties in such manner as the Judge shall think fit, and in default of any special direction shall abide the event of the action, and execution may issue for the recovery of any such costs in like manner as for any debt adjudged in the said Court.

Costs to abide the event of the action.

89. And be it enacted, that every order and judgment of any Court holden under this act, except as herein provided shall be final and conclusive between the parties, but the Judge shall have power to nonsuit the plaintiff in every case in which satisfactory proof shall not be given to him entitling either the plaintiff or defendant to the judgment of the Court, and shall also in every case whatever have the power, if he shall think fit, to order a new trial to be had upon such terms as he shall think reasonable, and in the meantime to stay the proceedings.

Judgments how far final.

No actions to be removed into Superior Courts but on certain conditions.

90. And be it enacted, that no plaint entered in any Court holden under this Act shall be removed or removable from the said Court into any of Her Majesty's Superior Courts of Record by any writ or process, unless the debt or damage claimed shall exceed five pounds, and then only by leave of a Judge of one of the said Superior Courts, in cases which shall appear to the Judge fit to be tried in one of the Superior Courts, and upon such terms as to payment of costs, giving security for debt or costs, or such other terms as he shall think fit.

Who may appear for any party in the Superior Courts.

91. And be it enacted, that no person shall be entitled to appear for any other party to any proceeding in any of the said Courts unless he be an attorney of one of Her Majesty's Superior Courts of Record, or a barrister-at-law instructed by such attorney on behalf of the party, or, by leave of the Judge, any other person allowed by the Judge to appear instead of such party; but no barrister, attorney, or other person, except by leave of the Judge, shall be entitled to be heard to argue any question as counsel for any other person in any proceeding in any Court holden under this Act; and no person, not being an attorney admitted to one of Her Majesty's Superior Courts of Record, shall be entitled to have or recover any sum of money for appearing or acting on behalf of any other person in the said Court; and no attorney shall be entitled to have or recover therefore any sum of money, unless the debt or damage claimed shall be more than forty shillings, or to have or recover more than ten shillings for his fees and costs, unless the debt or damage claimed shall be more than five pounds, or more than fifteen shillings in any case within the summary jurisdiction given by this Act; and in no case shall any fee exceeding one pound three shillings and sixpence be allowed for employing a barrister as counsel in the cause; and the expense of employing a barrister or an attorney, either by plaintiff or defendant, shall not be allowed on taxation of costs in the case of a plaintiff where less than five pounds is recovered, or in the case of a defendant where less than five pounds is claimed, or in any case unless by order of the Judge.

Court may make orders for payment by instalments.

92. And be it enacted, that the Judge may make orders concerning the time or times and by what instalments any debt or damages or costs for which judgment shall be obtained in the

said Court shall be paid, and all such moneys shall be paid into Court, unless the Judge shall otherwise direct.

Cross judgments.

93. And be it enacted, that if there shall be cross judgments between the parties, execution shall be taken out by that party only who shall have obtained judgment for the larger sum, and for so much only as shall remain after deducting the smaller sum, and satisfaction for the remainder shall be entered, as well as satisfaction on the judgment for the smaller sum, and if both sums shall be equal, satisfaction shall be entered upon both judgments.

Court may award execution against goods.

94. And be it enacted, that whenever the Judge shall have made an order for the payment of money, the amount shall be recoverable in case of default or failure of payment thereof forthwith, or at the time or times and in the manner thereby directed, by execution against the goods and chattels of the party against whom such order shall be made; and the Clerk of the said Court, at the request of the party prosecuting such order, shall issue under the seal of the Court a writ of *fieri facias* as a warrant of execution to the High Bailiff of the Court, who by such warrant shall be empowered to levy, or cause to be levied, by distress and sale of the goods and chattels of such party such sum of money as shall be so ordered, wheresoever they may be found within the district of the Court, whether within liberties or without, and also the costs of the execution; and all Constables and other peace officers within their several jurisdictions shall aid in the execution of every such warrant.

Execution not to issue till after default in payment of some instalment, and then it may issue for the whole sum due.

95. And be it enacted, that if the Judge shall have made any order for payment of any sum of money by instalments, execution upon such order shall not issue against the party until after default in payment of some instalment according to such order, and execution or successive executions may then issue for the whole of the said sum of money and costs then remaining unpaid, or for such portion thereof as the Judge shall order, either at the time of making the original order, or at any subsequent time, under the seal of the Court.

What goods may be taken in execution.

96. And be it enacted, that every Bailiff or officer executing any process of execution issuing out of the said County

Court against the goods and chattels of any person, may by virtue thereof seize and take any of the goods and chattels of such person (excepting the wearing apparel and bedding of such person or his family, and the tools and implements of his trade to the value of five pounds, which shall to that extent be protected from such seizure), and may also seize and take any money or bank notes (whether of the Bank of England or of any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money, belonging to any such person against whom any such execution shall have issued as aforesaid.

Securities seized to be held by High Bailiff.

97. And be it enacted, that the High Bailiff shall hold any cheques, bills of exchange, promissory notes, bonds, specialties, or other securities for money which shall have been so seized or taken as aforesaid, as a security or securities for the amount directed to be levied by such execution, or so much thereof as shall not have been otherwise levied or raised for the benefit of the plaintiff; and the plaintiff may sue in the name of the defendant, or in the name of any person in whose name the defendant might have sued, for the recovery of the sum or sums secured or made payable thereby, when the time of payment thereof shall have arrived.

Parties having obtained an unsatisfied judgment may obtain a summons on charge of fraud.

98. And be it enacted, that it shall be lawful for any party who has obtained any unsatisfied judgment or order in any Court held by virtue of this Act, or under any Act repealed by this Act, for the payment of any debt or damages or costs, to obtain a summons from any County Court within the limits of which any other party shall then dwell or carry on his business, such summons to be in such form as shall be directed by the rules made for regulating the practice of the County Courts as herein provided, and to be served personally upon the person to whom it is directed, requiring him to appear at such time as shall be directed by the said rules to answer such things as are named in such summons; and if he shall appear in pursuance of such summons he may be examined upon oath touching his estate and effects, and the manner and circumstances under which he contracted the debt or incurred the damages or liability which is the subject of the action in which judgment has been obtained against him; and as to the means and expectation he

then had, and as to the property and means he still hath, of discharging the said debt or damages or liability, and as to the disposal he may have made of any property; and the person obtaining such summons as aforesaid, and all other witnesses whom the Judge shall think requisite, may be examined upon oath touching the inquiries authorized to be made as aforesaid; and the costs of such summons and of all proceedings thereon shall be deemed costs in the cause.

Commitment for frauds, &c.

99. And be it enacted, that if the party so summoned shall not attend as required by such summons, and shall not allege a sufficient excuse for not attending, or shall, if attending, refuse to be sworn, or to disclose any of the things aforesaid, or if he shall not make answer touching the same to the satisfaction of such Judge, or if it shall appear to such Judge, either by the examination of the party or by any other evidence, that such party, if a defendant, in incurring the debt or liability which is the subject of the action in which judgment has been obtained has obtained credit from the plaintiff under false pretences, or by means of fraud or breach of trust, or has wilfully contracted such debt or liability without having had at the same time a reasonable expectation of being able to pay or discharge the same, or shall have made or caused to be made any gift, delivery, or transfer of any property, or shall have charged, removed, or concealed the same, with intent to defraud his creditors or any of them, or if it shall appear to the satisfaction of the Judge of the said Court that the party so summoned has then, or has had since the judgment obtained against him, sufficient means and ability to pay the debt or damages or costs so recovered against him, either altogether, or by any instalment or instalments which the Court in which the judgment was obtained shall have ordered, and if he shall refuse or neglect to pay the same as shall have been so ordered, or as shall be ordered pursuant to the power hereinafter provided, it shall be lawful for such Judge, if he shall think fit, to order that any such party may be committed to the common gaol or house of correction of the county, district, or place in which the party summoned is resident, or to any prison which shall be provided as the prison of the Court, for any period not exceeding forty days.

Power of Judge to rescind or alter orders.

100. And be it enacted, that it shall be lawful for the Judge of any Court before whom such summons shall be heard, if he shall think fit, whether or not he shall make any order for the committal of the defendant, to rescind or alter any order that shall have been previously made against any defendant so summoned before him for the payment, by instalments or otherwise, of any debt or damages recovered, and to make any further or other order, either for the payment of the whole of such debt or damages and costs forthwith, or by any instalments, or in any other manner as such Judge may think reasonable and just.

Power to examine and commit at at hearing of the cause.

101. And be it enacted, that in every case where the defendant in any suit brought in any County Court shall have been personally served with the summons to appear or shall personally appear at the trial of the same, the Judge at the hearing of the cause, or at any adjournment thereof if judgment shall be given against the defendant, shall have the same power and authority of examining the defendant and the plaintiff and other parties touching the several things hereinbefore mentioned, and of committing the defendant to prison, and of making an order, as he might have and exercise under the provisions hereinbefore contained in case the plaintiff had obtained a summons for that purpose after the judgment obtained as hereinbefore mentioned.

Mode of issuing and executing warrants of commitment.

102. And be it enacted, that whenever any order of commitment shall have been made as aforesaid the Clerk of the said Court shall issue under the seal of the Court a warrant of commitment, directed to one of the Bailiffs of any County Court, who by such warrant shall be empowered to take the body of the person against whom such order shall be made; and all Constables and other peace officers within their several jurisdictions shall aid in the execution of every such warrant; and the gaoler or keeper of every gaol, house of correction, and prison mentioned in any such order shall be bound to receive and keep the defendant therein until discharged under the provisions of this Act, or otherwise by due course of law; and no protection, order, or certificate granted by any Court of Bankruptcy, or for the relief of Insolvent Debtors, shall be available to discharge

any defendant from any commitment under such last-mentioned order.

103. And be it enacted, that no imprisonment under this Act shall in anywise operate as a satisfaction or extinguishment of the debt or other cause of action on which a judgment has been obtained, or protect the defendant from being anew summoned and imprisoned for any new fraud or other default rendering him liable to be imprisoned under this Act, or deprive the plaintiff of any right to take out execution against the goods and chattels of the defendant, in the same manner as if such imprisonment had not taken place.

Imprisonment not to operate as a satisfaction for the debt, &c.

104. And be it enacted, that in all cases where a warrant of execution shall have issued against the goods and chattels of any party, or an order for his commitment shall have been made under this act, and such party, or his goods and chattels, shall be out of the jurisdiction of the Court, it shall be lawful for the High Bailiff of the Court to send such warrant of execution or of commitment to the Clerk of any other Court constituted under this Act, within the jurisdiction of which such party, or his goods and chattels, shall then be or be believed to be, with a warrant thereto annexed, under the hand of the High Bailiff and seal of the Court from which the original warrant issued, requiring execution of the same, and the Clerk of the Court to which the same shall be sent shall seal or stamp the same with the seal of his Court, and issue the same to the High Bailiff of his Court, and thereupon such last-mentioned High Bailiff shall be authorized and required to act in all respects as if the original warrant of execution or commitment had been directed to him by the Court of which he is the High Bailiff, and shall, within such time as shall be specified in the Rules of Practice, return to the High Bailiff of the Court from which the same originally issued, what he shall have done in the execution of such process, and in case a levy shall have been made shall, within such time as shall be specified in the Rules of Practice, pay over all moneys received in pursuance of the warrant to the High Bailiff of the Court from which the same shall have originally issued, retaining the fees for execution of the process; and where any order or commitment shall have been made, and the person apprehended, he shall be forthwith conveyed, in

How execution may be had out of the jurisdiction of the Court.

custody of the Bailiff or officer apprehending him, to the gaol or house of correction or other prison of the Court within the jurisdiction of which he shall have been apprehended, and kept therein for the time mentioned in the warrant of commitment unless sooner discharged under the provisions of this Act; and all Constables and other peace officers shall be aiding and assisting within their respective districts in the execution of such warrant.

Power to Judge to suspend execution in certain cases.

105. And be it enacted, that if it shall at any time appear to the satisfaction of the Judge, by the oath or affirmation of any person, or otherwise, that any defendant is unable, from sickness or other sufficient cause, to pay and discharge the debt or damages recovered against him, or any instalment thereof ordered to be paid as aforesaid, it shall be lawful for the Judge, in his discretion, to suspend or stay any judgment, order, or execution given, made, or issued in such action, for such time and on such terms as the Judge shall think fit, and so from time to time until it shall appear by the like proof as aforesaid that such temporary cause of disability has ceased.

Regulating the sale of goods taken in execution.

106. And be it enacted, that no sale of any goods which shall be taken in execution as aforesaid shall be until after the end of five days at least next following the day on which such goods shall have been so taken, unless such goods be of a perishable nature, or upon the request in writing of the party whose goods shall have been so taken; and until such sale the goods shall be deposited by the bailiff in some fit place, or they may remain in the custody of a fit person approved by the High Bailiff, to be put in possession by the Bailiff; and it shall be lawful for the High Bailiff, from time to time as he shall think proper, to appoint such and so many persons for keeping possession, and so many sworn brokers and appraisers for the purpose of selling or valuing any goods, chattels, or effects taken in execution under this Act as shall appear to him to be necessary, and to direct security to be taken from each of them, for such sum and in such manner as he shall think fit, for the faithful performance of their duties without injury or oppression; and the Judge or High Bailiff may dismiss any person, broker, or appraiser so appointed; and no goods taken in execution under this Act shall be sold for the purpose of satisfying the warrant

of execution except by one of the brokers or appraisers so appointed; and the brokers or appraisers so appointed shall be entitled to have, out of the produce of the goods so distrained or sold, sixpence in the pound on the value of the goods for the appraisement thereof, whether by one broker or more, over and above the stamp duty, and for advertisements, catalogues, sale and commission, and delivery of goods, one shilling in the pound on the net produce of the sale.

As to the liability of goods taken in execution under 8 Anne, c. 17.

107. And be it enacted, that so much of an Act passed in the eighth year of the reign of Queen Anne, intituled "An Act for the better Security of Rents, and to prevent Frauds committed by Tenants," as relates to the liability of goods taken by virtue of any execution, shall not be deemed to apply to goods taken in execution under the process of any Court holden under this Act; but the landlord of any tenement in which any such goods shall be so taken shall be entitled, by any writing under his hand or under the hand of his agent, to be delivered to the Bailiff or officer making the levy, which writing shall state the terms of holding, and the rent payable for the same, to claim any rent in arrear then due to him, not exceeding the rent of four weeks where the tenement is let by the week, and not exceeding the rent accruing due in two terms of payment, where the tenement is let for any other term less than a year, and not exceeding in any case the rent accruing due in one year; and in case of any such claim being so made the Bailiff or officer making the levy shall distrain as well for the amount of the rent so claimed, and the costs of such additional distress, as for the amount of money and costs for which the warrant of execution issued under this Act, and shall not proceed to sell the same or any part thereof within five days next after such distress taken; and if any replevin be made of the goods so taken, such of the goods shall be sold under the execution as shall satisfy the money and costs for which the warrant of execution issued, and the costs of the sale; and the overplus of such sale (if any), and also the residue of the goods, shall be returned as in other cases of distress for rent, and replevin thereof; and for every such additional distress for rent in arrear the High Bailiff of the Court shall be entitled to have as the costs of the distress, instead of the fees allowed by this Act for making such distress, and keeping possession thereof, the fees allowed by an Act passed in the

Landlords may claim certain rents in arrear.

Bailiffs making levies may restrain for rent and costs.

In case of replevins.

57 Geo. 3, c. 93. fifty-seventh year of the reign of King George the Third, intituled "An Act to regulate the Costs of Distresses levied for Payment of small Rents."

No execution shall be stayed by writ of error.

108. And be it enacted, that no judgment or execution shall be stayed, delayed, or reversed upon or by any writ of error, or *supersedeas* thereon, to be sued for the reversing of any judgment given in any Court holden under the provisions of this Act.

Execution to be superseded on payment of debt and costs.

109. And be it enacted, that in or upon every warrant of execution issued against the goods and chattels of any person whomsoever the Clerk of the Court shall cause to be inserted or endorsed the sum of money and costs adjudged, with the sums allowed by this Act as increased costs for the execution of such warrant; and if the party against whom such execution shall be issued shall, before an actual sale of the goods and chattels pay or cause to be paid or tendered unto the Clerk of the Court out of which such warrant of execution has issued, or to the Bailiff holding the warrant of execution, such sum of money and costs as aforesaid, or such part thereof as the person entitled thereto shall agree to accept in full of his debt or damages and costs together with the fees herein directed to be paid, the execution shall be superseded, and the goods and chattels of the said party shall be discharged and set at liberty.

Debtor to be discharged from custody upon payment of debt and costs.

110. And be it enacted, that any person imprisoned under this Act who shall have paid or satisfied the debt or demand, or the instalments thereof payable, and costs remaining due at the time of the order of imprisonment being made, together with the costs of obtaining such order, and all subsequent costs, shall be discharged out of custody, upon the certificate of such payment or satisfaction, signed by the Clerk of the Court, by leave of the Judge of the Court in which the order of imprisonment was made.

Minutes of proceedings to be kept.

111. And be it enacted, that the Clerk of every Court holden under this Act shall cause a note of all plaints and summonses, and of all orders, and of all judgments and executions, and returns thereto, and of all fines, and of all other proceedings of the Court, to be fairly entered from time to time in a book

belonging to the Court, which shall be kept at the office of the Court; and such entries in the said book, or a copy thereof bearing the seal of the Court, and purporting to be signed and certified as a true copy by the Clerk of the Court, shall at all times be admitted in all Courts and places whatsoever as evidence of such entries, and of the proceeding referred to by such entry or entries, and of the regularity of such proceeding, without any further proof.

Suitors' money unclaimed in six years to go to general fund.

112. And be it enacted, that the Clerk or Clerks of every such Court shall in the month of March in each year make out a correct list of all sums of money belonging to suitors in the Court which shall have been paid into Court, and which shall have remained unclaimed for five years before the first day of the month of January then last past, specifying the names of the parties for whom or on whose account the same were so paid into Court; and a copy of such list shall be put up and remain during Court hours in some conspicuous part of the Court House, and at all times in the Clerk's office, and all sums of money which shall have been paid into any such Court, to the use of any suitor or suitors thereof, and which shall have remained unclaimed for the period of six years before the passing of this Act, and which are now in the hands of any Commissioner, Trustee, Judge, or Officer of such Court, or otherwise held in trust for such suitors, and all further sums of money which shall hereafter be paid into any such Court, to the use of any suitor or suitors thereof, shall, if unclaimed for the period of six years after the same shall have been so paid into Court, be applicable as part of the general fund of the Court, and shall be carried to the account of such fund, and no person shall be entitled to claim any sum which shall have remained unclaimed for six years; but no time during which the person entitled to claim such sum shall have been an infant or *feme covert*, or of unsound mind, or beyond the seas, shall be taken into account in estimating the said period of six years.

Power of committal for contempt

113. And be it enacted, that if any person shall wilfully insult the Judge or any Juror, or any Bailiff, Clerk, or Officer of the said Court, for the time being, during his sitting or attendance in Court, or in going to or returning from the Court, or shall wilfully interrupt the proceedings of the Court,

or otherwise misbehave in Court, it shall be lawful for any Bailiff or Officer of the Court, with or without the assistance of any other person, by the order of the Judge, to take such offender into custody, and detain him until the rising of the Court; and the Judge shall be empowered, if he shall think fit, by a warrant under his hand, and sealed with the seal of the Court, to commit any such offender to any prison to which he has power to commit offenders under this Act for any time not exceeding seven days, or to impose upon any such offender a fine not exceeding five pounds for every such offence, and in default of payment thereof to commit the offender to any such prison as aforesaid for any time not exceeding seven days, unless the said fine be sooner paid.

Penalty for assaulting Bailiffs, or rescuing goods taken in execution.

114. And be it enacted, that if any officer or Bailiff of any Court holden under this Act shall be assaulted while in the execution of his duty, or if any rescue shall be made or attempted to be made of any goods levied under process of the Court, the person so offending shall be liable to a fine not exceeding five pounds, to be recovered by order of the Court, or before a justice of the peace as hereinafter provided; and it shall be lawful for the Bailiff of the Court or any peace officer in any such case to take the offender into custody (with or without warrant), and bring him before such Court of Justice accordingly.

Bailiffs made answerable for escapes, and neglect to levy execution.

115. And be it enacted, that in case any Bailiff of the said Court who shall be employed to levy any execution against goods and chattels shall, by neglect or connivance, or omission, lose the opportunity of levying any such execution, then upon complaint of the party aggrieved by reason of such neglect, connivance, or omission, (and the fact alleged being proved to the satisfaction of the Court on the oath of any credible witness,) the Judge shall order such Bailiff to pay such damages as it shall appear that the plaintiff has sustained thereby, not exceeding in any case the sum of money for which the said execution issued, and the Bailiff shall be liable thereto; and upon demand made thereof, and on his refusal so to pay and satisfy the same, payment thereof shall be enforced by such ways and means as are herein provided for enforcing a judgment recovered in the said Court.

Remedies

116. And be it enacted, that if any Clerk, Bailiff, or officer

of the Court, acting under colour or pretence of the process of the said Court, shall be charged with extortion or misconduct, or with not duly paying or accounting for any money levied by him under the authority of this Act, it shall be lawful for the Judge to inquire into such matter in a summary way, and for that purpose to summon and enforce the attendance of all necessary parties in like manner as the attendance of witnesses in any case may be enforced, and to make such order thereupon for the repayment of any money extorted, or for the due payment of any money so levied as aforesaid, and for the payment of such damages and costs, as he shall think just; and also, if he shall think fit, to impose such fine upon the Clerk, Bailiff, or officer, not exceeding ten pounds for each offence, as he shall deem adequate; and in default of payment of any money so ordered to be paid payment of the same may be enforced by such ways and means as are herein provided for enforcing a judgment recovered in the said Court.

against, and Penalties on Bailiffs and other officers for misconduct.

117. And be it enacted, that every Treasurer, Clerk, Bailiff, or other officer employed in putting this Act or any of the powers thereof in execution, who shall wilfully and corruptly exact, take, or accept any fee or reward whatsoever, other than and except such fees as are or shall be appointed and allowed respectively as aforesaid, for or on account of anything done or to be done by virtue of this Act, or on any account whatsoever relative to putting this Act into execution, shall, upon proof thereof before the said Court, and in the case of a Clerk, Treasurer, or High Bailiff on allowance of the finding of the Court by the Lord Chancellor, be for ever incapable of serving or being employed under this Act in any office of profit or emolument, and shall also be liable for damages as herein provided.

Penalty on officers taking fees besides those allowed.

118. And be it enacted, that if any claim shall be made to or in respect of any goods or chattels taken in execution under the process of any Court holden under this Act, or in respect of the proceeds or value thereof, by any landlord for rent, or by any person not being the party against whom such process has issued, it shall be lawful for the Clerk of the Court, upon application of the officer charged with the execution of such process, as well before as after any action brought against

Claims as to goods taken in execution to be adjudicated in Court.

such officer, to issue a summons calling before the said Court as well the party issuing such process as the party making such claim, and thereupon any action which shall have been brought in any of Her Majesty's Superior Courts of Record, or in any local or inferior Court, in respect of such claim, shall be stayed, and the Court in which such action shall have been brought, or any Judge thereof, on proof of the issue of such summons, and that the goods and chattels were so taken in execution, may order the party bringing such action to pay the costs of all proceedings had upon such action after the issue of such summons out of the County Court; and the Judge of the County Court shall adjudicate upon such claim, and make such order between the parties in respect thereof, and of the costs of the proceedings, as to him shall seem fit, and such order shall be enforced in like manner as any order made in any suit brought in such Court.

Actions of replevin may be brought without writ.

119. And be it declared and enacted, that all actions of replevin in cases of distress for rent in arrear or damage feasant which shall be brought in the County Court shall be brought without writ in a Court held under this Act.

Plaints where to be entered.

120. And be it enacted, that in every such action of replevin the plaint shall be entered in the Court holden under this Act for the district wherein the distress was taken.

How actions of replevin may be removed.

121. And be it enacted, that in case either party to any such action of replevin shall declare to the Court in which such action shall be brought that the title to any corporeal or incorporeal hereditament, or to any toll, market, fair, or franchise, is in question, or that the rent or damage in respect of which the distress shall have been taken is more than the sum of twenty pounds, and shall become bound, with two sufficient sureties, to be approved by the Clerk of the Court, in such sums as to the Judge shall seem reasonable, regard being had to the nature of the claim, and the alleged value or amount of the property in dispute, or of the rent or damage, to prosecute the suit with effect and without delay, and to prove before the Court by which such suit shall be tried that such title as aforesaid is in dispute between the parties, or that there was ground for believing that the said rent or damage was more than twenty pounds, then, and not otherwise, the action may be removed

before any Court competent to try the same in such manner as hath been accustomed.

122. And be it enacted, that when and so soon as the term and interest of the tenant of any house, land, or other corporeal hereditament, where the value of the premises or the rent payable in respect of such tenancy did not exceed the sum of fifty pounds by the year, and upon which no fine shall have been paid, shall have ended, or shall have been duly determined by a legal notice to quit, and such tenant, or, if such tenant do not actually occupy the premises, or occupy only a part thereof, any person by whom the same or any part thereof shall be then actually occupied, shall neglect or refuse to quit and deliver up possession of the premises, or of such part thereof respectively, it shall be lawful for the landlord or his agent to enter a plaint in the County Court to be holden under this Act, and thereupon a summons shall issue to the person so neglecting or refusing; and if the tenant or occupier shall not thereupon appear at the time and place appointed, and show cause to the contrary, and shall still neglect or refuse to deliver up possession of the premises, or of such part thereof of which he is then in possession, to the said landlord or his agent, it shall be lawful for such landlord or agent to give to the Court proof of the holding, and of the end or other determination of the tenancy, with the time or manner thereof, and, where the title of the landlord has accrued since the letting of the premises, the right by which he claims the possession; and upon proof of service of the summons, and of the neglect or refusal of the tenant or occupier, as the case may be, it shall be lawful for the Judge to issue a warrant under the seal of the Court to any Bailiff of the Court, requiring and authorizing him, within a period to be therein named, not less than seven or more than ten clear days from the date of such warrant, to give possession of the premises to such landlord or agent; and such warrant shall be a sufficient warrant to the said Bailiff to enter upon the premises, with such assistants as he shall deem necessary, and to give possession accordingly: provided always, that entry upon any such warrant shall not be made on a Sunday, Good Friday, or Christmas Day, or at any time except between the hours of nine in the morning and four in the afternoon: provided also, that nothing herein contained shall be deemed to protect any

Possession of small tenements may be recovered by plaint in County Court.

If tenant, &c. neglect to appear, or refuse to give possession, Judge may, on proof of service of summons, issue a warrant to enforce the same.

person by whom any such warrant shall be sued out of the County Court from any action which may be brought against him by any such tenant or occupier for or in respect of such entry and taking possession where such person had not, at the time of suing out the same as aforesaid, lawful right to the possession of the same premises.

The manner in which such summons shall be served.

123. And be it enacted, that such summons as last aforesaid may be served either personally or by leaving the same with some person being in and apparently residing at the place of abode of the person or persons so holding over as aforesaid; provided that if the person or persons so holding over, or any or either of them, cannot be found, and the place of abode of such person or persons shall either not be known, or admission thereto cannot be obtained for serving such summons, the posting of the said summons on some conspicuous part of the premises so held over shall be deemed to be good service upon such person or persons respectively.

Judges, Clerks, Bailiffs, or other officers not liable to actions on account of proceedings taken.

124. And be it enacted, that it shall not be lawful to bring any action or prosecution against the Judge or against the Clerk of the Court by whom such warrant as aforesaid shall have been issued, or against any Bailiff or other person by whom such warrant may be executed or summons affixed, for issuing such warrant, or executing the same respectively, or affixing such summons, by reason that the person by whom the same shall be sued out had not lawful right to the possession of the premises.

Where landlord has a lawful title, he shall not be deemed a trespasser by reason of irregularity.

125. And be it enacted, that where the landlord at the time of applying for such warrant as aforesaid had lawful right to the possession of the premises, or of the part thereof so held over as aforesaid, neither the said landlord nor his agent, nor any other person acting in his behalf, shall be deemed to be a trespasser by reason merely of any irregularity or informality in the mode of proceeding for obtaining possession under the authority of this Act, but the party aggrieved may, if he think fit, bring an action on the case for such irregularity or informality, in which the damage alleged to be sustained thereby shall be specially laid, and may recover full satisfaction for such special damage, with costs of suit; provided that if the special damage so laid be not proved, the defendant shall be entitled to a verdict, and that if proved, but assessed by the Jury at any

sum not exceeding five shillings, the plaintiff shall recover no more costs than damages, unless the Judge before whom the trial shall have been holden shall certify that in his opinion full costs ought to be allowed.

How execution of warrant of possession may be stayed.

126. And be it enacted, that in every case in which the person by whom any such warrant shall be sued out of the County Court had not at the time of suing out the same lawful right to the possession of the premises, the suing out of any such warrant as last aforesaid shall be deemed a trespass by him against the tenant or occupier of the premises, although no entry shall be made by virtue of the warrant; and in case any such tenant or occupier will become bound, with two sufficient sureties, to be approved by the Clerk of the Court, in such sum as to the Judge shall seem reasonable, regard being had to the value of the premises, and to the probable cost of such action, to sue the person by whom such warrant was sued out with effect and without delay, and to pay all the costs of the proceeding in such action in case a verdict shall pass for the defendant, or the plaintiff shall discontinue or not prosecute his action or become nonsuit therein, execution upon the warrant shall be stayed until judgment shall have been given in such action of trespass; and if upon the trial of such action of trespass a verdict shall pass for the plaintiff, such verdict and judgment thereupon shall supersede the said warrant.

Proceedings on the bond for staying warrant of possession, &c.

127. And be it enacted, that every bond given on the removal of any action out of the County Court, or upon staying the execution of any such warrant of possession as aforesaid, or on moving for a new trial, or to set aside a verdict, judgment or nonsuit, shall be made to the other party to the action at the costs of such other party, and shall be approved by the Judge, and attested under the seal of the Court; and if the bond so taken be forfeited, or if, upon the proceeding for securing which such bond was given, the Judge before whom such proceeding shall be had shall not certify upon the record in Court that the condition of the bond hath been fulfilled, the party to whom the bond shall have been so made may bring an action of debt, and recover thereon: provided always, that the Court in which such action as last aforesaid shall be brought may by a rule of Court give such relief to the parties liable upon such bond as may be

agreeable to justice and reason, and such rule shall have the nature and effect of a defeasance to such bond.

Concurrent jurisdiction with Superior Courts.

128. And be it enacted, that all actions and proceedings which before the passing of this Act might have been brought in any of Her Majesty's Superior Courts of Record where the plaintiff dwells more than twenty miles from the defendant, or where the cause of action did not arise wholly or in some material point within the jurisdiction of the Court within which the defendant dwells or carries on his business at the time of the action brought, or where any officer of the County Court shall be a party, except in respect of any claim to any goods and chattels taken in execution of the process of the Court, or the proceeds or value thereof, may be brought and determined in any such Superior Court, at the election of the party suing or proceeding, as if this Act had not been passed.

As to actions brought for small debts in Superior Courts.

129. And be it enacted, that if any action shall be commenced after the passing of this Act in any of Her Majesty's Superior Courts of Record, for any cause other than those lastly hereinbefore specified, for which a plaint might have been entered in any Court holden under this Act, and a verdict shall be found for the plaintiff for a sum less than twenty pounds, if the said action is founded on contract, or less than five pounds if it be founded on tort, the said plaintiff shall have judgment to recover such sum only, and no costs; and if a verdict shall not be found for the plaintiff the defendant shall be entitled to his costs as between attorney and client, unless in either case the Judge who shall try the cause shall certify on the back of the record that the action was fit to be brought in such Superior Court.

Penalties and costs to be recovered before a Justice, and levied by distress.

130. And be it enacted, that all penalties, fines and forfeitures by this Act inflicted or authorized to be imposed (the manner of recovering and applying whereof is not hereby otherwise particularly directed) shall, upon proof before any justice of the peace having jurisdiction within the county or place where the offender shall reside or be, or the offence shall be committed, either by the confession of the party offending, or by the oath of any credible witness, be levied, with the costs attending the summons and conviction, by distress and sale of the goods and chattels of the party offending, by warrant under the hand of

any such justice; and the overplus (if any), after such penalties, fines, and forfeitures, and the charges of such distress and sale, are deducted, shall be returned, upon demand, unto the owner of such goods and chattels.

131. And be it enacted, that if any such penalties, fines, and forfeitures respectively shall not be paid forthwith upon conviction, it shall be lawful for such justice to order the offender so convicted to be detained in safe custody until return can be conveniently made to such warrant of distress, unless such offender shall give sufficient security to the satisfaction of such justice for his appearance before him on such day as shall be appointed for the return of such warrant of distress, such day not being more than eight days from the time of taking any such security, which security such justice shall be empowered to take by way of recognizance or otherwise as to him shall seem fit.

In default of security, offender may be detained till return of warrant of distress.

132. And be it enacted, that if upon return of such warrant it shall appear that no sufficient distress can be had thereupon, or in case it shall appear to the satisfaction of such justice, either by confession of the offender or otherwise, that he hath not within the jurisdiction of such justice sufficient goods and chattels whereon to levy all such penalties, forfeitures, costs, and charges, such justice may, at his discretion, without issuing any warrant of distress, commit the offender to the common gaol or house of correction for any time not exceeding three calendar months, unless such penalties, forfeitures, and fines, and all reasonable charges attending the recovery thereof, shall be sooner paid and satisfied.

In default of distress, offender may be committed.

133. And be it enacted, that the moneys arising from any such penalties, forfeitures, and fines as aforesaid, when paid and levied, shall (if not by this Act directed to be otherwise applied) be from time to time paid to the Clerk of the Court, and shall be applied in aid of the general fund thereof.

Penalties not otherwise applied, to be paid into the general fund.

134. And be it enacted, that in all cases in which by this Act any penalty or forfeiture is made recoverable before a justice of the peace, it shall be lawful for such justice to summon before him the party complained against, and on such summons to hear and determine the matter of such complaint,

Justices may proceed by summons in the recovery of penalties.

and on proof of the offence to convict the offender, and to adjudge him to pay the penalty or forfeiture incurred, and to proceed to recover the same, although no information in writing shall have been exhibited before him; and all such proceedings by summons without information in writing shall be as valid and effectual to all intents and purposes as if an information in writing had been exhibited.

Form of conviction.

135. And be it enacted, that in all cases where any conviction shall be had for any offence committed against this Act the form of conviction may be in the words or to the effect following; (that is to say,)

"Be it remembered, that on this day of in the year of our Lord *A. B.* is convicted before of Her Majesty's Justices of the peace for the [*or* before a Judge appointed under an Act passed in the year of the reign of Her Majesty Queen Victoria, intituled *here insert the title of this Act.*] of having [*state the offence*]; and I [*or* we] the said do adjudge the said to forfeit and pay for the same the sum of or to be committed to for the space of . Given under hand and seal the day and year aforesaid."

Proceedings not invalid for want of form.

136. And be it enacted, that no order, verdict, or judgment, or other proceeding, made concerning any of the matters aforesaid, shall be quashed or vacated for want of form.

Distress not unlawful for want of form.

137. And be it enacted, that where any distress shall be made for any sum of money to be levied by virtue of this Act, the distress itself shall not be deemed unlawful, nor the party making the same be deemed a trespasser, on account of any defect or want of form in the information, summons, conviction, warrant of distress, or other proceeding relating thereto, nor shall the party distraining be deemed a trespasser from the beginning on account of any irregularity which shall afterwards be committed by the party so distraining, but the person aggrieved by such irregularity may recover full satisfaction for the special damage in an action upon the case.

Limitation of actions for proceedings

138. And for the protection of persons acting in the execution of this Act, be it enacted, that all actions and prosecutions

to be commenced against any person for anything done in pursuance of this Act shall be laid and tried in the county where the fact was committed, and shall be commenced within three calendar months after the fact committed, and not afterwards, or otherwise; and notice in writing of such action, and of the cause thereof, shall be given to the defendant one calendar month at least before the commencement of the action; and no plaintiff shall recover in any such action if tender of sufficient amends shall have been made before such action brought, or if after action brought a sufficient sum of money shall have been paid into Court, with costs, by or on behalf of the defendant. in execution of this Act.

139. And be it enacted, that if any person shall bring any suit in any of Her Majesty's Superior Courts of Record in respect of any grievance committed by any Clerk, Bailiff, or officer of any Court holden under this Act, under colour or pretence of the process of the said Court, and the Jury upon the trial of the action shall not find greater damages for the plaintiff than the sum of twenty pounds, no costs shall be awarded to the plaintiff in such action unless the Judge shall certify in Court upon the back of the record that the action was fit to be brought in such Superior Court. Provision for the protection of officers of the Court.

140. Provided always, and be it enacted, that nothing in this Act contained shall be construed to alter or affect the rights or privileges of the Chancellor, Masters, and Scholars of the Universities of Oxford or Cambridge respectively as by law possessed, or the jurisdiction of the Courts of the Chancellors or Vice Chancellors of the said universities, as holden under the respective charters of the said universities, or otherwise. Act not to affect rights of Universities of Oxford or Cambridge.

141. Provided always, and be it declared and enacted, that nothing in this Act contained shall be construed to affect the Courts of the Lord Warden or of the Vice Warden of the stannaries of Cornwall; but this provision shall not be deemed to prevent the establishment of any Court under this Act within the said stannaries, or to limit or affect the jurisdiction of any Court so established under this Act. Nothing to affect the Courts of the Wardens of the Stannaries.

142. And be it enacted, that in construing this Act all things directed or authorized to be done by or with respect to the Lord Chancellor shall and may be done by or with respect to a Lord Interpretation of Act.

Keeper or the first Commissioner for the custody of the great seal of the United Kingdom of Great Britain and Ireland; and all things directed or authorized to be done by or with respect to the Commissioners of Her Majesty's Treasury shall and may be done by and with respect to three or more of the said Commissioners or the Lord High Treasurer; and the word "person" shall be understood to mean a body politic, corporate, or collegiate, as well as an individual; and every word importing the singular number shall, where necessary to give full effect to the enactments herein contained, be understood to mean several persons or things as well as one person or thing; and every word importing the masculine gender shall, where necessary, be understood to mean a female as well as a male; and the words "County Court" shall be understood to mean any Court holden under this Act; and the term "landlord" shall be understood to mean the person entitled to the immediate reversion of the lands, or, if the property be holden in joint tenancy, coparcenary, or tenancy in common, shall be understood to mean any one of the persons entitled to such reversion; and the word "Clerk" shall be understood to mean "Chief Clerk," or "Registrar," and the words "attorney at law" shall be understood to include a solicitor in any Court of Equity; and the word "agent" shall be understood to mean any person usually employed by the landlord in the letting of lands, or in the collection of the rents thereof, or specially authorized to act in any particular matter by writing under the hand of such landlord; and the word "Bailiff" shall be understood to include High Bailiff; unless in any of these cases there be something in the context inconsistent with such meaning.

Act may be amended, &c.

143. And be it enacted, that this Act may be amended or repealed by any Act to be passed in this session of Parliament.

SCHEDULES to which this Act refers.

SCHEDULE (A.)

ACTS for the more easy and speedy Recovery of Small Debts within the Towns, Parishes, and Places under written and other Parishes and Places adjacent; that is to say,

Ashton-under-Lyne	48 Geo. 3, c. xcviii.
Bath	45 Geo. 3, c. lxvii.
Beverley	46 Geo. 3, c. cxxxv.
Birmingham	47 Geo. 3, c. xiv.
Blackheath	47 Geo. 3, c. iv.
Bolingbroke and Horncastle ...	47 Geo. 3, Sess. 2, c. lxxviii
Boston	47 Geo. 3, Sess. 2. c. i.
Bradford	47 Geo. 3, Sess. 2, c xxxix.
Bristol	56 Geo. 3, c. lxxvi.
Bristol	7 Will. 4 & 1 Vict. c. lxxxiv.
Brixton	46 Geo. 3, c. lxxxviii.
Broseley	22 Geo. 3, c. xxxvii.
Canterbury	25 Geo. 2, c. xlv.
Chippenham	5 Geo. 3, c. ix.
Cirencester	32 Geo. 3, c. lxxvii.
Codsheath	48 Geo. 3, c. l.
Deal	26 Geo. 3, c. xviii.
Derby	6 Geo. 3, c. xx.
Doncaster	4 Geo. 3, c. xl.
Dovor	24 Geo. 3, c. viii.
Ecclesall	48 Geo. 3, c. ciii.
Elloe	47 Geo. 3, c. xxxvii.
Ely, Isle of	18 Geo. 3, c. xxxvi.
Exeter	13 Geo. 3, c. xxvii.
Faversham	25 Geo. 3, c. vii.
Folkestone	26 Geo. 3, c. xcviii.
Gloucester	1 Will. & Mary, c. xviii.
Gravesend	47 Geo. 3, Sess. 2, c. xl.
Grimsby, Great	46 Geo. 3, c. xxxvii.
Hagnaby	18 Geo. 3, c. xxxiv.
Halesowen	47 Geo. 3, c. xxxvi
Ipswich	47 Geo. 3, Sess. 2, c. lxxix.
Kidderminster	12 Geo. 3, c. lxvi.
King's Lynn	10 Geo. 3, c. xx.

Kingston-upon-Hull	48 Geo. 3, c. cix.
Kirkby in Kendal	4 Geo. 3, c. xli.
Lincoln	24 Geo. 2, c. xvi.
Liverpool	6 & 7 Will. 4, c. cxxxv.
Manchester	48 Geo. 3, c. xliii.
Margate	47 Geo. 3, Sess. 2, c. vii.
Middlesex	23 Geo. 2, c. xxxiii.
Newcastle-upon-Tyne	1 Will. & Mary, c. xvii.
Norwich	12 & 13 Will. 3, c. vii.
Old Swinford	17 Geo. 3, c. xix.
Pontefract Honor	2 & 3 Vict. c. lxxxv.
Poulton	10 Geo. 3, c. xxi.
Rochester	48 Geo. 3, c. li.
Saint Albans	25 Geo. 2, c. xxxviii.
Saint Briavels	5 & 6 Vict. c. lxxxiii.
Sandwich	47 Geo. 3, c. xxxv.
Sheffield	48 Geo. 3, c. ciii.
Shrewsbury	23 Geo. 3, c. lxxiii.
Southwark and East Brixton...	4 Geo. 4, c. cxxiii.
Stockport	46 Geo. 3, c. cxiv.
Tower Hamlets	2 Will. 4, c. lxv.
Westbury	48 Geo. 3, c. lxxxviii.
Westminster	24 Geo. 2, c. xlii.
Wight, Isle of	46 Geo. 3, c. lxvi.
Wolverhampton	48 Geo. 3, c. cx.
Wraggoe	19 Geo. 3, c. xliii.
Yarmouth, Great	31 Geo. 2, c. xxiv.

SCHEDULE (B.)

ACTS for the more easy and speedy Recovery of Small Debts within the Towns, Parishes, and Places under written, and other Parishes and Places adjacent thereto: that is to say,

Aberford	2 & 3 Vict. c. lxxxvi. 3 Vict. c. xxxiii.
Ashby-de-la-Zouch	1 Vict. c. xv.
Barnsley	1 & 2 Vict. c. xc.
Belper	2 & 3 Vict. c. xcviii.
Blackburn	4 & 5 Vict. c. lxvii.
Blackheath	6 & 7 Will. 4. c. cxx. 1 & 2 Vict. c. lxxxix.

Bolton	3 Vict. c. xviii.
Brighton	3 Vict. c. x.
Burnley	4 & 5 Vict. c. lxxxiii.
Bury	2 & 3 Vict. c. ci.
Chesterfield	2 & 3 Vict. c. civ.
Crediton	8 & 9 Vict. c. lxxix.
East Retford	4 & 5 Vict. c. lxxxvii.
Eckington	2 & 3 Vict. c. ciii.
Exeter	4 & 5 Vict. c. lxxiii.
Gainsburgh	4 & 5 Vict. c. lxxxvi.
Glossop	2 & 3 Vict. c. lxxxviii.
Grantham	2 & 3 Vict. c. lxxxix.
Halifax	2 & 3 Vict. c. cvi.
Hatfield	4 & 5 Vict. c. lxxiv.
Hinckley	7 Will. 4, c. viii.
Hyde	3 & 4 Will. 4, c. cxix.
Kingsnorton	4 & 5 Vict. c. lxxv.
Launceston	4 & 5 Vict. c. lxxvi.
Leicester	6 & 7 Will. 4, c. cxxiii. 7 Will. 4, c. vii.
Loughborough	7 Will. 4, c. ix.
Newark	4 & 5 Vict. c. lxxix.
New Sarum	4 & 5 Vict. c. lxxxiv.
New Sleaford	4 & 5 Vict. c. lxxxv.
Newton Abbott	3 Vict. c. xxv.
Nottingham	2 & 3 Vict. c. cv.
Oakham	1 Vict. c. xxxvi.
Prestbury Division of the Hundred of Macclesfield	6 Will. 4, c. xiii.
Prestwich-cum-Oldham	2 & 3 Vict. c. c.
Roborough	7 Will. 4, c. lxii.
Rochdale	2 & 3 Vict. c. xc.
Rotherham	2 & 3 Vict. c. lxxxvii.
Saint Helen's	4 & 5 Vict. c. lxxxii.
Staffordshire Potteries	4 & 5 Vict. c. lxxxi.
Tavistock	3 Vict. c. lxviii.
Totnes	4 & 5 Vict. c. lxxx.
Warrington	2 & 3 Vict. c. xci.
Westminster	6 & 7 Will. 4, c. cxxxvii.
Wigan	4 & 5 Vict. c. lxxviii.
Wirksworth	2 & 3 Vict. c. cii.

SCHEDULE (C.)

Town.	Officer of the Court.	Persons to whom the next Appointment is to belong.
Ashton-under-Lyne	Clerk of the Court to be holden at Ashton.	Lord of the Manor of Ashton-under-Lyne.
Birmingham	High Bailiff of the Court to be holden at Birmingham.	Lord of the Manor of Birmingham.
Cirencester	Clerk of the Court to be holden at Cirencester.	Lord of the Manor and Seven Hundreds of Cirencester.
Kidderminster ...	Clerk of the Court to be holden at Kidderminster.	Lord of the Manor of the Borough of Kidderminster.
Stourbridge	Clerk of the Court to be holden at Stourbridge.	Lord of the Manor of Old Swinford or Amblecoat, to whom, on the day before the passing of this Act, the next turn belongs to appoint the Clerk or Beadle of the Court of Requests for the Parish of Old Swinford.
St. Albans	High Bailiff of the Court to be holden at Watford.	Lord of the Hundred of Cashio.
Sheffield	Judge of the Court to be holden at Sheffield.	Lord of the Manor of Sheffield.
	Clerk of the Court to be holden at Sheffield.	Lord of the Manor of Ecclesall.
Stockport	Clerk of the Court to be holden at Stockport.	Lord of the Manor and Barony of Stockport.

SCHEDULE (D).

	AMOUNT OF DEMAND.											
	Not exceeding 20s.		Exceeding 20s. and not exceeding 40s.		Exceeding 40s. and not exceeding £5.		Exceeding £5. and not exceeding £10.		Exceeding £10.			
									Founded on Contract.		Founded on Tort.	
JUDGE'S FEES.	s.	d.	s.	d.	s.	d.	s.	d.	s.	d.	s.	d.
Every summons	0	3	0	6	1	0	2	0	3	0	3	0
Every hearing without a jury	1	0	1	6	2	6	7	6	10	0	15	0
Every hearing or trial with a jury	2	0	3	0	5	0	10	0	15	0	20	0
Every order or judgment or application for an order	0	3	0	6	1	0	2	0	3	0	3	0
CLERK'S FEES.												
Entering every plaint and issuing the summons thereon.....................	0	3	0	6	1	0	2	0	3	0	3	6
Every subpœna, when required	0	3	0	6	0	9	1	0	1	6	1	6
Every hearing, trial, or nonsuit without a jury	0	4	0	6	1	0	1	6	2	0	3	6
Adjournment of any cause .	0	3	0	4	0	6	1	0	2	0	2	0
Entering and giving notice of special defence.........	0	3	0	6	1	0	1	6	2	0	2	0
Swearing every witness for plaintiff or defendant ...	0	2	0	2	0	3	0	4	0	6	1	0
Entering and drawing up every judgment and order, and copy thereof	0	3	0	6	1	0	1	6	2	6	3	0
Payment of money in or out of Court, whether or not by instalments at different times, including notice thereof, and taking receipt	0	2	0	4	0	6	—		—		—	

N.B.—Where the plaintiff recovers less than his claim, so as to reduce the scale of costs, the plaintiff to pay the difference.

	AMOUNT OF DEMAND.											
	Not exceeding 20s.		Exceeding 20s. and not exceeding 40s.		Exceeding 40s. and not exceeding £5.		Exceeding £5, and not exceeding £10.		Exceeding £10. Founded on Contract.		Exceeding £10. Founded on Tort.	
	s.	d.	s.	d.	s.	d.	s.	d.	s.	d.	s.	d.
Paying money into Court, and entering same in books, and notice thereof, or of sum in full satisfaction having been paid into Court, each instalment or payment.	—		—		—		0	6	0	8	1	0
Payment of money out of Court, and taking receipt, exclusive of stamp	—		—		—		0	9	1	0	1	6
Every search in the books .	0	2	0	2	0	4	0	6	1	0	1	0
Issuing every warrant, attachment, or execution .	0	6	0	6	1	0	1	6	2	6	3	0
Supersedeas of execution, or certificate of payment, or withdrawal of cause	0	3	0	6	0	6	1	0	1	6	2	0
Warrant of commitment for an assault or misbehaviour in Court	1	0	1	0	1	0	1	0	1	0	1	0
Entering and giving notice of jury being required ...	0	6	0	9	1	0	1	6	2	0	2	6
Issuing summons for jury .	0	6	0	9	1	0	1	6	2	0	2	6
Swearing jury	0	6	0	8	0	10	1	0	1	6	1	6
Every hearing, trial, or nonsuit with a jury	1	0	1	6	2	0	3	0	5	0	7	6
Taking recognizance or security for costs............	—		—		—		2	0	2	6	3	0
Inquiring into sufficiency of sureties proposed, and taking bond on removal of plaint, or grant of new trial, or other occasion	2	6	2	6	2	6	2	6	2	6	2	6
Taxing costs	—		—		—		1	0.	2	0	3	0

HIGH BAILIFF'S FEES.	AMOUNT OF DEMAND.											
	Not exceeding 20s.		Exceeding 20s. and not exceeding 40s.		Exceeding 40s. and not exceeding £5.		Exceeding £5. and not exceeding £10.		Exceeding £10. Founded on Contract.		Exceeding £10. Founded on Tort.	
	s.	d.	s.	d.	s.	d.	s.	d.	s.	d.	s.	d.
Calling every cause	0	2	0	3	0	4	0	6	1	0	1	6
Affidavit of service of summons out of the jurisdiction	0	2	0	3	0	6	1	0	1	6	2	0
Serving every summons, order, or subpœna within one mile of Court-house .	0	3	0	4	0	6	0	10	1	0	1	6
If above one mile, then extra for every other mile	0	2	0	2	0	3	0	4	0	4	—	
Execution of every warrant, precept, or attachment against the goods or body within one mile of the Court-house	1	6	2	6	3	6	4	0	5	0	7	0
If above one mile, then extra for every other mile	0	3	0	3	0	4	0	6	0	6	0	6
If two officers be necessary in the judgment of the Court, then extra, within one mile of the Court-house	1	0	1	6	2	0	2	0	2	6	3	0
If above one mile, then extra for every other mile	0	3	0	3	0	4	0	6	0	6	0	6
Keeping possession of goods till sale, per day, not exceeding five days	1	0	1	6	2	0	2	0	2	6	3	0
Carrying every delinquent to prison, including all expenses and assistants, per mile	1	0	1	0	1	0	1	0	1	0	1	0
Issuing warrant to Clerk of another Court	1	0	1	6	2	0	2	6	3	0	3	6

N.B.—The several fees payable on proceedings in replevin to be regulated on the same scale by the amount distrained for, and on proceedings for the recovery of tenements by the yearly rent or value of the tenement sought to be recovered.

12 & 13 VICT. c. 101.

An Act to amend the Act for the more easy Recovery of Small Debts and Demands in England, and to abolish certain Inferior Courts of Record.—[*1st August*, 1849.]

WHEREAS by an Act passed in the tenth year of Her present Majesty, intituled "An Act for the more easy Recovery of Small Debts and Demands in England," power is given to the Judge in the cases therein mentioned to order that a party summoned in respect of an unsatisfied judgment or order, or a defendant in any suit, may be committed to the common gaol or house of correction of the county, district, or place in which such party or defendant is resident, or to any prison which should be provided as the prison of the Court, for any period not exceeding forty days: and whereas it is inexpedient that persons should be committed under the said Act to houses of correction: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that from and after the thirty-first day of August one thousand eight hundred and forty-nine so much of the said Act as authorizes any Judge to order any such party or defendant to be committed as hereinbefore mentioned shall be repealed; and it shall be lawful for any Judge who would have been authorized under the said Act to order any party or defendant to be committed as aforesaid for any such period as aforesaid, to order such party or defendant to be committed for the like period to the common gaol wherein the debtors under judgment and in execution of the Superior Courts of justice may be confined for the county, city, borough, or place in which such party or defendant is resident, or to any other gaol or debtors prison for the same county, city, borough, or place which shall by any declaration of one of Her Majesty's

9 & 10 Vict. c. 95.

To what prisons persons may be committed under recited Act for frauds, &c.

principal Secretaries of State be allowed as a place of imprisonment for persons committed under the said Act, so long as such declaration shall remain in force and unrevoked, or to any prison which has been or shall be provided as in the said Act mentioned as the prison of the Court by the Judge of which such order may be made; and all the provisions of the said Act applicable to and consequent upon the order for commitment under the power hereinbefore repealed, and to the prisons to which persons might be committed under such order, shall apply to and be construed with reference to any order made under the power hereinbefore contained, and the prisons to which persons may be committed under such order.

To what prisons persons may be committed under the said Act for contempt.

2. And whereas by the said Act of the tenth year of Her Majesty it was enacted, that if any person should wilfully insult the Judge, or any Juror, or any Bailiff, Clerk, or officer of the Court for the time being, during his sitting or attendance in Court, or in going to or returning from the Court, or should wilfully interrupt the proceedings of the Court, or otherwise misbehave in Court, the Judge should be empowered, if he should think fit, by a warrant under his hand, and sealed with the seal of the Court, to commit any such offender to any prison to which he had power to commit offenders under the said Act for any time not exceeding seven days, or to impose upon any such offender a fine not exceeding five pounds for every such offence, and in default of payment thereof to commit the offender to any such prison as aforesaid for any time not exceeding seven days, unless the said fine were sooner paid: be it enacted, that from and after the thirty-first day of August one thousand eight hundred and forty-nine so much of the last-recited enactment as authorizes the Judge to commit any such offender to any such prison as therein mentioned shall be repealed, and in any case in which any Judge would under such enactment have been authorized to commit any such offender to any such prison as therein mentioned for such period as therein mentioned, such Judge shall be empowered, if he think fit, by warrant, as therein mentioned, to commit such offender for the like period to any common gaol wherein the debtors under judgment and in execution of the Superior Courts of justice may be confined, for any county, city, borough, or place wholly

or in part within any district of such Judge, or to any other gaol or debtors prison for any such county, city, borough, or place which shall by declaration as aforesaid be allowed as a place of imprisonment for persons committed under the said Act, so long as such declaration shall remain in force and unrevoked, or to any prison which has been or may be provided as in the said Act mentioned, as the prison of the Court by the Judge of which such offender shall be committed.

Where debtors prison is situated at an inconvenient distance or crowded, Secretary of State may authorize commitment to house of correction.

3. Provided always, and be it enacted, that where, by reason of any common gaol wherein debtors under judgment and in execution of the Superior Courts of justice may be confined being situated at an inconvenient distance, or of the crowded state of any such gaol, or otherwise, it shall appear to one of Her Majesty's principal Secretaries of State expedient so to do, it shall be lawful for such Secretary of State, by order under his hand, to authorize to be used for the purposes of commitments under the said Act of the tenth year of Her Majesty any house of correction or common gaol in which such debtors as aforesaid may not be confined (to be mentioned in such order), and to make orders for altering the regulations of such house of correction or gaol as last aforesaid, so far as respects the treatment of persons to be committed under this Act, in order that such persons may be treated as nearly as may be in like manner as if they had been committed to a gaol in which such debtors as aforesaid may be confined, notwithstanding the regulations in force in such house of correction or gaol to which such persons may be committed; and every such order may from time to time be revoked or varied by such Secretary of State as occasion may require.

Gaols maintained by lords of liberties and private persons not to be used without their consent.

4. Provided also, and be it enacted, that where, under the provisions hereinbefore contained, persons might be committed to any gaol or prison not now used for the purposes of the said Act which by reason of the tenure of any liberty or franchise, or otherwise, is maintained at the private charges of the lord of such liberty or franchise, or of any other private person, such gaol or prison shall not be used for the purposes of commitments under the said Act until such lord or person as aforesaid shall have given his consent in writing to such gaol or prison being so used.

9 & 10 Vict. c. 95.

5. And whereas by the said Act of the tenth year of Her Majesty it was enacted, "that it should be lawful for any Court holden under that Act, with the approval of one of Her Majesty's principal Secretaries of State, to use as a prison for the purposes of that Act any prison then belonging to any Court holden under any of the Acts cited in the schedules (A.) and (B.) to that Act, in all cases where it should appear to the said Secretary of State that the common gaol or house of correction of the county, district, or place in which the Court was established was inconveniently situated, or was not applicable for the use of the said Courts; and whenever any such prison should be so allowed to be used it should be deemed one of the common gaols of the county for which it should be used, as if it had been provided after presentment of the insufficiency of one common gaol for such county under the provisions of an Act passed in the sixth year of the reign of Her Majesty, intituled "An Act to amend the Laws concerning Prisons:" and whereas a prison used under the said recited enactment for a division of a county may be deemed a gaol for the county at large: be it declared and enacted, that where a prison allowed to be used with the approval of such Secretary of State shall be so used for any riding, parts, or division of a county having a distinct commission of the peace, or a distinct rate in the nature of a county rate applicable to the maintenance of a prison for such riding, parts, or division (and not for the county at large), such prison shall be deemed one of the common gaols for the riding, parts, or division for which it is so used (and not for the county at large), as if it had been provided after presentment of the insufficiency of one common gaol for such riding, parts, or division under the said Act of the sixth year of Her Majesty.

5 & 6 Vict. c. 98.

A prison used under recited enactment for any riding, parts, or division of a county, to be deemed a common gaol for such riding, parts, or division.

Power to Secretary of State, with consent of the Treasury, to alter fees payable on proceedings in County Courts.

6. And be it enacted, that it shall be lawful for one of Her Majesty's principal Secretaries of State, with the consent of the Commissioners of Her Majesty's Treasury, from time to time to regulate or vary, lessen or increase, the fees or sums in the name of fees now payable, or which from time to time may be payable, on the several proceedings in the Courts holden under the said Act of the tenth year of Her Majesty to the Judges, Clerks, and High Bailiffs of such Courts, and such fees or sums

may be so regulated from time to time by way of per-centage on the amount of the demand; and such Secretary of State, with such consent as aforesaid, may from time to time appoint, instead of all or any of the fees or sums in the name of fees now payable or which may from time to time be payable as aforesaid, other fees or sums by way of per-centage or otherwise, and to be payable on such proceedings under such last-mentioned Act as such Secretary of State with such consent as aforesaid may direct.

So much of recited Act 9 & 10 Vict. c. 95, as directs Clerk to pay over moneys to Treasurer repealed.

7. And be it enacted, that so much of the said Act of the tenth year of Her Majesty as directs that the Clerk of every Court holden under the said Act shall pay over to the Treasurer of the Court, quarterly or oftener in every year, by order of the Court, the moneys remaining in his hands over and above his own fees, and such balance as he shall be allowed by order of the Court to retain for the current expenditure of the Court, shall be repealed; and the Clerk of every Court holden under the said Act shall pay over to the Treasurer of the Court, quarterly or oftener in every year, as he may be directed by the Commissioners of Her Majesty's Treasury, the moneys remaining in his hands over and above his own fees, and such balance as he shall be allowed by order of the said Commissioners to retain for the current expenditure of the Court.

Clerk to pay over his balance as the Treasury may direct.

So much of 9 & 10 Vict. c. 95, as enacts that Clerks shall make all necessary contracts, &c., repealed.

8. And be it enacted, that so much of the said Act of the tenth year of Her Majesty as enacts that the Clerk of every Court, under the directions of the Commissioners of Her Majesty's Treasury, and subject to such regulations as they may require to be enforced, shall make all necessary contracts or otherwise provide for repairing and furnishing, and for cleaning lighting, and warming, the court-house and offices of such Court, and for supplying the said Court and offices with law and office books and stationery, and for defraying all other necessary expenses not otherwise provided for incident to the holding of the said Court, and as provides that no payment for any charge shall be allowed in the Clerk's accounts until allowed under the hand of the Judge, shall be repealed; and it shall be lawful for the Commissioners of Her Majesty's Treasury to provide for the several purposes and for defraying the several expenses aforesaid in such manner, and by the agency

Treasury to provide for the several purposes, and defray

the expenses. of such officers of the Court, or otherwise, as to them shall seem fit.

Providing for payment of the expenses incurred under 10 & 11 Vict. c. 102; and for applying the surplus of General Fund of any Court to expenses of any other Courts where such fund is deficient.

9. And be it enacted, that it shall be lawful for the Commissioners of Her Majesty's Treasury, if they shall think fit, to direct that the whole or part of the expenses incurred or to be incurred in the performance of the duties required by the Act passed in the eleventh year of Her Majesty's reign, intituled "An Act to abolish the Court of Review in Bankruptcy, and to make alterations in the jurisdiction in the Courts of Bankruptcy and Court for Relief of Insolvent Debtors, to be performed by the officers of the Courts established by the said Act of the tenth year of Her Majesty, shall be paid out of "the general fund" of such respective Courts, and that the surplus for the time being of the general fund of each such Court, after defraying the expenses of such respective Court, shall be applicable, under the directions of the said Commissioners of the Treasury, to the payment of the expenses of any other of the said Courts of which the general fund may be insufficient for that purpose.

Judge may authorize Bailiffs to act as brokers.

10. And be it enacted, that it shall be lawful for the Judge of any Court holden under the said Act of the tenth year of Her Majesty, by any writing under his hand, to authorize any of the Bailiffs appointed by the High Bailiff under the said Act to act as brokers or appraisers for the purpose of selling or valuing any goods, chattels, or effects taken in execution under the said Act; and the Bailiffs so authorized by the Judge may, without other licence in this behalf, do and perform all the duties and shall be entitled to the poundage which sworn brokers or appraisers may now do and perform and are entitled to under the said Act.

So much of 9 & 10 Vict. c. 95, as requires notice of Her Majesty's intention to make Order in Council repealed.

11. And be it enacted, that so much of the said Act of the tenth year of Her Majesty as requires that notice of the intention of Her Majesty to take into consideration the propriety of making any Order in Council for the purposes of the said Act shall be published in the *London Gazette* one calendar month at least before any such order shall be made, shall be repealed.

Lord Chancellor may authorize five Judges

12. And be it enacted, that it shall be lawful for the Lord Chancellor to appoint and authorize five of the Judges of the Courts holden under the said Act of the tenth year of Her

Majesty to frame such general rules and orders as to them shall seem expedient for and concerning the practice and proceedings of the Courts holden under the said Act, and for the execution of the process of such Courts, and in relation to any of the provisions of the said Act as to which there may have arisen doubts or have been conflicting decisions in the said Courts; and all such rules and orders as aforesaid as shall be certified to the Lord Chancellor, under the hands of the Judges so appointed or authorized, or any three of them, shall be submitted by the Lord Chancellor to three or more of the Judges of the Superior Courts of Common Law at Westminster, of whom the Chief Justice of the Court of Queen's Bench or Common Pleas or the Chief Baron of the Court of Exchequer shall be one; and such Judges of the Superior Courts may approve or disallow, or alter or amend, such rules and orders, or any of them; and such of the rules as shall be so approved by such Judges of the Superior Courts shall forthwith after the approval thereof be laid before both Houses of Parliament, if Parliament be then sitting, or if Parliament be not sitting, then within five days after the next meeting thereof; and no such rule or order shall have effect until six weeks after the same shall have been so laid before both Houses of Parliament; and any rule or order so approved shall from and after the expiration of such time as last aforesaid be of the same force and effect as if the same had been enacted by authority of Parliament.

of County Courts to make general rules, such rules to be approved by Judges of the Superior Courts, and laid before Parliament.

13. And whereas it is expedient to abolish the Court of the Marshalsea of Household of the Kings of England, and the Court of our Lady the Queen of the Palace of the Queen at Westminster, and Her Majesty's Court of Record for the Honour of Peveril and additional limits of the same: be it enacted, that from and after the passing of this Act no action or suit shall be commenced in any of the said Courts.

No action or suit to be brought in the Marshalsea or Palace Court or Peveril Court after the passing of this Act.

14. And be it enacted, that from and after the thirty-first day of December one thousand eight hundred and forty-nine all the power, authority, and jurisdiction of the said Court of the Marshalsea, and of the said Court of the Palace of the Queen at Westminster, and of the said Court for the Honour of Peveril and additional limits of the same, and of the Judges of the said Courts respectively, shall cease and determine, and that all

Powers of Marshalsea and Palace and Peveril Courts to cease on 31st Dec. 1849, and actions and suits then depending to be trans-

ferred to the Court of Common Pleas or the County Court, as the case may require.

actions and suits then depending in the said Courts respectively shall be transferred, with all the proceedings thereon, to Her Majesty's Court of Common Pleas at Westminster, if the debt or damages sought to be recovered in such actions or suits respectively shall exceed the sum of twenty pounds, and to the County Court for the district in which the respective defendants shall then reside, if the debt or damages sought to be recovered in such actions or suits respectively shall not exceed the sum of twenty pounds; and such actions and suits so transferred shall be dealt with and decided according to the practice of those Courts respectively, or of the Court whence the same shall be transferred, according to the discretion of the Court to which the same shall be transferred, which Court shall, for the purpose of such actions or suits only, be deemed and taken to have all the power and jurisdiction to all intents and purposes possessed before the passing of this Act by the Court whence such action or suit shall be transferred.

Judgments of abolished Courts obtained on or before 31st Dec. 1849 may be enforced as heretofore.

15. Provided always, and be it enacted, that all judgments obtained in any of the Courts hereby abolished on or before the thirty-first day of December one thousand eight hundred and forty-nine shall, notwithstanding the passing of this Act, be as valid and effectual, and as capable of being enforced by the process of the Court in which such judgments shall respectively have been obtained, as if this Act had not been passed.

Records of abolished Courts to be placed under the charge of Master of the Rolls under 1 & 2 Vict. c. 94.

16. And be it enacted, that the records, muniments, and writings of the several Courts abolished by this Act shall, as soon as conveniently may be after the thirty-first day of December one thousand eight hundred and forty-nine, be placed under the charge and superintendence of the Master of the Rolls for the time being, to be deposited and kept in such place or places as the said Master of the Rolls shall direct; and such records, muniments, and writings shall thenceforth be deemed to be in the custody of the Master of the Rolls under the authority of an Act passed in the second year of Her Majesty, intituled "An Act for keeping safely the Public Records;" and, until such records, muniments, and writings shall be so placed under the charge and superintendence of the said Master of the Rolls as aforesaid, the same shall be respectively

kept by the same persons and in the same places as before the passing of this Act.

17. And be it enacted, that every person who is legally entitled to any franchise or office in any of the Courts abolished by this Act shall be entitled to make a claim for compensation to the Commissioners of Her Majesty's Treasury within six calendar months after the passing of this Act, and it shall be lawful for the said Commissioners, in such manner as they shall think fit, to inquire what was the nature of the office, and what was the tenure thereof, and what were the lawful fees and emoluments in respect of which such compensation should be allowed; but any increase of such fees or emoluments which shall have happened after the passing of the said Act of the tenth year of Her Majesty shall not be taken into account in estimating the amount of such compensation; and the Commissioners in each case shall award such gross or yearly sum, and for such time as they shall think just, to be awarded, upon consideration of the special circumstances of each case; and all such compensations shall be paid out of the consolidated fund of the United Kingdom of Great Britain and Ireland: provided always, that if any person holding any office in any of the said Courts shall be appointed after the passing of this Act to any public office or employment, the payment of the compensation awarded to him under this Act, so long as he shall continue to receive the salary or emoluments of such office or employment, shall be suspended, if the amount of such salary or emoluments be greater than the amount of such compensation, or, if not, shall be diminished by the amount of such salary or emoluments.

Compensation to officers of abolished Courts.

18. And be it enacted, that no privilege shall be allowed to any attorney, solicitor, or other person, to exempt him from the provisions of this Act or the said Act for the more easy recovery of small debts and demands in England.

Attorneys and solicitors not exempt from provisions of this Act.

19 And be it enacted, that this Act may be amended or repealed by any Act to be passed in this session of Parliament.

Act may be amended, &c.

10 & 11 VICT. c. lxxi.

An Act for the more easy Recovery of Small Debts and Demands within the City of London and the Liberties thereof. —[*2nd July*, 1847.]

WHEREAS by an Act of Parliament passed in the Session of Parliament held in the fifth and sixth years of the reign of His Majesty King William the Fourth, intituled "An Act for amending and consolidating the Acts of Parliament for the Recovery of Small Debts in the City of London and the Liberties thereof, and for enabling the Goods of the Debtors to be taken in execution," the various Acts then in force for establishing and regulating the Court of Requests in the City of London for the recovery of small debts within the said city and the liberties thereof, and thereby severally recited, were repealed; and by the said Act certain persons therein named or referred to were nominated and appointed Commissioners of the said Court of Requests, to sit as usual in the said Court for the period and in the rotation therein mentioned; and by the said Act powers were granted for the establishment of the said Court, and for carrying on the business thereof: and whereas the City of London is a county of itself: and whereas the Sheriffs' Court of the City of London is a Court of ancient jurisdiction, having cognizance of all pleas of personal actions to any amount: and whereas it is expedient that the manner of proceeding in the said Court for the recovery of small debts and demands should be altered and regulated, and that the Court of Requests established under the said recited Act of Parliament should be abolished: may it therefore please your Majesty that it may be enacted; and be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in

5 & 6 W. 4, c. 94.

this present Parliament assembled, and by the authority of the same, that all pleas of personal actions, where the debt or damage claimed is not more than twenty pounds, whether on balance of account or otherwise, which shall hereafter be commenced or tried in the Sheriffs' Court, shall be holden in the said Court without writ, and shall be heard and determined in a summary way, and according to the provisions of this Act: provided always, that the said Court shall not, under the provisions of this Act, have cognizance of any action of ejectment, or in which, although the debt or damage claimed may not exceed twenty pounds, the title to any corporeal or incorporeal hereditaments, or to any toll, fair, market, or franchise, shall be in question, or in which the validity of any devise, bequest, or limitation under any will or settlement may be disputed, or in any action for any libel or slander, or for criminal conversation or for seduction, or for breach of promise of marriage.

Actions to be hereafter commenced in the Sheriffs' Court, for sums not above 20*l.* to be heard and determined under the provisions of this Act.

2. Provided always, and be it enacted, that all pleas of personal actions, and all other proceedings in the Sheriffs' Court, except the trial, under the provisions of this Act, of pleas of personal actions where the debt or damage claimed is not more than twenty pounds, or, not being more than twenty pounds, is excepted from the provisions of this Act, shall and may be commenced and carried on in the said Court as if this Act had not been passed; and all proceedings in personal actions where the debt or damage claimed is not more than twenty pounds, which may have been actually commenced in the Sheriffs' Court before the commencement of this Act, and which might have been commenced in the said Court under the provisions of this Act, shall be continued, executed, and enforced against all persons liable thereto in the same manner as if they had been commenced therein under the provisions of this Act; and all other proceedings in the said Court, not being proceedings in personal actions where the debt or damage claimed is not more than twenty pounds, and which could not have been commenced in the said Court under the provisions of this Act, shall be continued, executed, and enforced against all persons liable thereto in the same manner in all respects as they might have been continued, executed, and enforced in case this Act had not passed.

All other actions and proceedings to be carried on as if this Act had not passed.

3. And be it enacted, that the said Court shall, as well for the purposes of this Act as for all other purposes, be held at the Guildhall within the City of London, or at such other place within the said city as the Mayor, Aldermen, and Commons of the said city in common council assembled shall from time to time by any order direct or appoint. Court to be held at Guildhall.

4. And be it enacted, that it shall be lawful for the Mayor, Aldermen, and Commons from time to time to appoint the place and day or days for holding the Sheriffs' Court for the purposes of this Act; and the order for the first holding of the said Court for the purposes of this Act shall be published in two London daily morning newspapers, and shall be stuck up at the principal door or entrance of the said Guildhall, and shall be continued so stuck up for the period of one month at the least before the day appointed for the first holding the said court. Mayor, &c. to appoint days and place for holding Court.

5. And be it enacted, that from and after the commencement of this Act, the said existing Court of Requests for the recovery of Small Debts in the said city and the liberties thereof shall be abolished; and the said recited Act of Parliament of the Session held in the fifth and sixth years of the reign of His Majesty King William the Fourth shall be and the same is hereby repealed. After commencement of this Act existing Court of Requests to be abolished

6. Provided always, and be it enacted, that all proceedings in the said Court of Requests, or otherwise in execution of the said recited Act, commenced before the commencement of this Act, shall be as valid to all intents and purposes as if this Act had not been passed, and may be continued, executed, and enforced in the Sheriffs' Court, under the provisions of this Act, against all persons liable thereto, in the same manner in all respects as if they had been commenced in the said Court under the provisions of this Act. All proceedings commenced under recited Act in Court of Requests to be continued in Sheriffs' Court under this Act.

7. And be it enacted, that the Judge of the Sheriffs' Court shall preside at the trial in the said Court of all actions and proceedings commenced or directed to be carried on therein under the provisions of this Act. Judge of Sheriffs Court to preside in actions under this Act.

Judge of Court may appoint a deputy in case of illness, &c.

8. And be it enacted, that in case of illness or unavoidable absence, not occasioned by his other official duties, the cause whereof shall be entered on the minutes of the Court, it shall be lawful for the Judge of the Sheriffs' Court, or, in case of the inability of the Judge to make such appointment, for the said Mayor, Aldermen, and Commons, to appoint some other person, who shall have practised as a barrister-at-law for at least seven years, to act as the deputy of such Judge during such illness or unavoidable absence; and it shall also be lawful for the Judge, with the approval of the said Mayor, Aldermen, and Commons, to appoint a deputy, who shall have practised as a barrister for at least three years, to act for him for any time or times not exceeding in the whole two calendar months in any consecutive period of twelve calendar months; and every deputy so appointed, during the time for which he shall be so appointed, shall have all the powers and privileges and perform all the duties of the Judge of the said Court.

Chamberlain to be Treasurer of Sheriffs' Court.

9. And be it enacted, that the Chamberlain for the time being of the City of London shall, for the purposes of this Act, be and be considered as the Treasurer of the Sheriffs' Court.

Clerks, &c. in the Chamberlain's office to perform such duties in reference to the office of Treasurer as shall be required, and shall be paid an extra salary for the same.

10. And be it enacted, that the several Clerks, and other officers and servants for the time being employed in the office of the Chamberlain of the said city shall from time to time perform such duties in reference to the Court and the office of Treasurer thereof, hereby imposed on the said Chamberlain, as the Chamberlain for the time being in his character of Treasurer of the Court shall require; and every Clerk, officer, and servant of the Chamberlain, so employed in performing any of the duties of the Treasurer of the Court, shall receive and be paid by the said Mayor, Aldermen, and Commons, out of the general fund of the Court, such extra salary or allowance as a remuneration for their services as the said Mayor, Aldermen, and Commons shall from time to time think sufficient and proper.

Power to mayor, &c. to appoint Chief Clerk,

11. And be it enacted, that every Chief Clerk of the Court, to be hereafter appointed, shall be an Attorney of one of Her Majesty's Superior Courts of Common Law, who shall have

practised as an attorney for at least five years; and such Clerk shall be appointed by the said Mayor, Aldermen, and Commons; and in case of inability or misbehaviour of the Clerk for the time being of the Court, it shall be lawful for the said Mayor, Aldermen, and Commons to remove such Clerk, and to appoint some other person, qualified as aforesaid, to be Clerk of the Court; and, until otherwise directed by the said Mayor, Aldermen, and Commons, every such Clerk shall be paid by fees, as hereinafter provided; and in case any Assistant Clerk or Clerks shall be necessary for carrying on the business of the Court, such Assistant Clerk or Clerks shall, during such time as the Chief Clerk shall be paid by fees, be provided and paid by the Chief Clerk of the Court, but if the Chief Clerk shall at any time be paid by a salary and not by fees, then the Assistant Clerk or Clerks shall be appointed by the said Mayor, Aldermen, and Commons, and shall be paid out of the general fund of the Court such yearly salary for their services as the said Mayor, Aldermen, and Commons shall from time to time think proper.

who shall be an attorney, and from time to time to remove him.

Clerk to be paid by fees.

Appointment of assistant Clerks if necessary.

12. And be it enacted, that it shall be lawful for the Chief Clerk of the Court, with the approval of the Judge, or, in case of the inability of the Chief Clerk to make such appointment, for the Judge, from time to time to appoint a deputy, qualified to be appointed Chief Clerk of the Court, to act for the Chief Clerk of the Court at any time when he shall be prevented by illness or unavoidable absence from acting in such office, and to remove such deputy at his pleasure; and such deputy, while acting under such appointment, shall have the like powers and privileges, and be subject to the like provisions, duties, and penalties for misbehaviour, as if he were the Chief Clerk of the Court for the time being.

Chief Clerks, with approval of Judge, may appoint a deputy in case of illness, &c.

13. And be it enacted, that the Clerk of the Court, with such assistant Clerk or Clerks as aforesaid, in case any such shall be employed, shall issue all summonses, warrants, precepts, and writs of execution, and register all orders and judgments of the Court, and keep an account of all proceedings of the Court, and shall take charge of and keep an account of all Court fees and fines payable or paid into Court, and of all moneys paid into and out of Court, and shall enter an account of all such

Duties of Clerks.

fees, fines, and moneys in a book belonging to the Court, to be kept by him for that purpose, and shall from time to time, at such times as shall be directed by order of the Court, submit his accounts to be audited or settled by the Treasurer.

Offices of Clerk, Treasurer, and Bailiff, not to be conjoined.

14. And be it enacted, that it shall not be lawful for the Clerk of the Court, or the partner of any such Clerk, or any person in the service or employment of any such Clerk or his partner, to act as Treasurer or as a Bailiff of the Court, or for the Treasurer, his partner or Clerk, or any person in the service or employment of such Treasurer or his partner, to act as Clerk or as a Bailiff, or for any Bailiff, his partner or Clerk, or any person in the service or employment of any Bailiff or his partner, to act as Clerk or Treasurer of the Court.

Clerk, &c. not to act as attorneys in the Court.

15. And be it enacted, that no Clerk, Treasurer, Bailiff, or other officer of the Court shall, either by himself or his partner, be directly or indirectly engaged as attorney or agent for any party in any proceeding in the Court.

Penalty of fifty pounds on non-observance of the two previous enactments.

16. And be it enacted, that any person who, being the Clerk of the Court, or the partner of such Clerk, or a person in the service or employment of any such Clerk or of his partner, shall accept the office of Treasurer or of a Bailiff of the Court, or who, being the Treasurer of the Court, or the partner of any such Treasurer, or a person in the service or employment of any such Treasurer or of his partner, shall accept the office of Clerk or of a Bailiff in the execution of this Act, or who, being one of the Bailiffs of such Court, or the partner of any such Bailiff, or a person in the service or employment of any such Bailiff or of his partner, shall accept the office of Clerk or Treasurer in the execution of this Act, and also every Clerk, Treasurer, Bailiff, or other officer of the Court who shall be by himself or his partner, or in any way, directly or indirectly, concerned as attorney or agent for any party in any proceeding in the Court, shall for every such offence forfeit and pay the sum of fifty pounds to any person who shall sue for the same in any of Her Majesty's Superior Courts of Record, by action of debt or on the case, and shall also be liable to be dismissed by the Mayor, Aldermen, and Commons, who are hereby autho-

rized and empowered to dismiss such Clerk, Treasurer, Bailiff, or other officer accordingly.

17. And be it enacted, that there shall be one or more Bailiff or Bailiffs of the Court; and such Bailiff or Bailiffs shall be appointed by the said Mayor, Aldermen, and Commons; and, in case of the inability or misbehaviour of any such Bailiff or Bailiffs, it shall be lawful for the said Mayor, Aldermen, and Commons, or the Judge of the Court, by an order of Court to remove such Bailiffs or any of such Bailiffs; and one of the Bailiffs of the Court, if there shall be more than one, shall be called the Chief Bailiff of the Court.

Power to Mayor, &c. to appoint Bailiffs of the Court.

18. And be it enacted, that the said Bailiffs or one of them shall attend every sitting of the Court for such time as shall be required by the Judge, unless when their absence shall be allowed for reasonable cause by the Judge, and shall by themselves serve all the summonses and orders, and execute all the warrants, precepts, and writs, issued out of the Court under the provisions of this Act; and the said Bailiffs shall, in the execution of their duties, conform to all such general rules as shall be from time to time made for regulating the proceedings of the Court as hereinafter provided, and subject thereunto to the order and direction of the Judge; and the said Bailiffs shall be entitled to receive all fees and sums of money allowed by this Act in the name of fees payable to the Bailiff, out of which they shall provide for the execution of the duties for which such fees are allowed, and for the payment of the Bailiffs according to such scale of remuneration as shall be from time to time approved by the Judge; and every such Bailiff shall be responsible for all the acts and defaults of himself, in like manner as the Sheriff of any county in England is responsible for the acts and defaults of himself and his officers.

Duties of the Bailiffs, &c.

19. Provided always, and be it enacted, that the persons holding the offices or performing the duties of Clerk, Assistant Clerk, Beadle, or Serjeant in the said Court of Requests under the said recited Act, at the time of the passing of this Act, and who shall continue respectively to hold the same offices, or to perform the same duties at the time when the said Act shall

Officers performing duties under recited Act may be appointed under this Act.

be repealed under the provisions of this Act, whether or not qualified as hereinbefore provided, may, if the said Mayor, Aldermen, and Commons shall think fit, be appointed to be Clerks and Bailiffs of the Sheriffs' Court for the purposes of this Act, and, if so appointed, shall continue to execute their several offices, subject to the power of removal provided in this Act.

Treasurers, Clerks, and Bailiffs to give security.

20. And be it enacted, that the Treasurer, Clerk, and Bailiff of the Court who may receive any moneys in the execution of his duty shall give such security for such sum, and in such manner and form as the Mayor, Aldermen, and Commons from time to time shall order, for the due performance of their several offices, and for the due accounting for and payment of all moneys received by them under this Act, or which they may become liable to pay for any misbehaviour in their office.

Fees to be taken according to Schedule A. to this Act, and tables to be exhibited in conspicuous places.

21. And be it enacted, that on every proceeding in the Court under the provisions of this Act there shall be payable to the Judge, Clerk, and Bailiffs of the Court such fees as are set down in the Schedule marked (A.) to this Act annexed, or which shall be set down in any schedule of fees reduced or altered under the power hereinafter contained for that purpose, and none other; and a table of such fees shall be put up in some conspicuous place in the place where the Court shall be held, and in the Clerk's office; and the fees on every proceeding shall be paid in the first instance by the plaintiff or party on whose behalf such proceeding is to be had on or before such proceeding, and in default of payment thereof shall be enforced by order of the Judge by such ways and means as any debt or damage ordered to be paid by the Court can be recovered; and the fees upon execution shall be paid into Court at the time of the issue of the warrant of execution, and shall be paid by the Clerk of the Court to the Bailiff upon the return of the warrant of execution, and not before: provided always, that it shall be lawful for the Mayor, Aldermen, and Commons to lessen the amount of the fees to be taken in the Court under the provisions of this Act, in such manner as to them shall seem fit, and again to increase such fees, so that the scale of fees given in the schedule to this Act be not in any case surpassed; and in case

the fees allowed to be taken by the Judge, Clerk, or Bailiffs of the Court shall appear to the said Mayor, Aldermen, and Commons to be more than sufficient, it shall be lawful for the Mayor, Aldermen, and Commons to order that a certain part of their fees only shall be paid to them respectively, as the greatest salaries to be by them respectively received; and in such case, and so long as such direction shall be in force, the amount of the residue of the fees shall be accounted for and paid to the Treasurer of the Court for the purposes of this Act, and shall form part of the general fund of the Court.

22. And be it enacted, that every person who shall have been entitled to any office or to any fees or salary for his services in the execution of the said recited Act under which the existing Court of Requests in the said city is holden shall be entitled to make a claim for compensation to the Mayor, Aldermen, and Commons within six calendar months after the commencement of this Act; and it shall be lawful for the Mayor, Aldermen, and Commons, in such manner as they shall think proper, to inquire what was the tenure of any such office, and what were the lawful fees and emoluments in respect of which such compensation should be allowed; and the Mayor, Aldermen, and Commons in each case shall award such gross or yearly sum, and for such time as they shall think just to be awarded upon consideration of the special circumstance of each case; and all such compensations shall be paid out of the general fund of the Court, to be formed under the provisions of this Act; provided always, that if any person holding any office in the said Court of Requests shall be appointed after the passing of this Act to any office or situation in the Sheriffs' Court, the payment of the compensation awarded to him under this Act, so long as he shall continue to receive the salary or emoluments of such office or employment, shall be suspended if the amount of such salary or emoluments is greater than the amount of such compensation, or, if not, shall be diminished by the amount of such salary or emoluments.

Compensation for persons whose rights or emoluments will be diminished.

23. And be it enacted, that it shall be lawful for the Mayor, Aldermen, and Commons to order that the Judge, Clerk, Bailiffs, and officers of the Court, or any of them, shall be paid by

Officers of Court may be paid by salaries instead of fees

If Court abolished, no compensation allowed except in certain cases.

salaries instead of fees, or in any manner other than is provided by this Act; and if the Mayor, Aldermen, and Commons shall make such order, or if any Act shall be passed whereby it shall be provided that the Court shall be otherwise constituted than is provided by this Act, no such Clerk or Bailiff, nor any Judge, Treasurer, or other officer of the Court, shall be entitled to any compensation on account of ceasing to hold his office or to receive the fees allowed by this Act, or on account of his emoluments being affected by such alteration, unless he shall have acted as Clerk, Bailiff, or other officer of the said Court of Requests before the passing of this Act, in which case he shall be entitled to compensation for the loss of his fees or emoluments, in like manner and subject to the same regulations as he would have been entitled to, under the provisions herein contained, in case he had been deprived of any fees or emoluments by reason of the passing of this Act; and in such case all sums payable in the name of fees to such officers of the Court as shall be paid by salaries shall be paid from time to time to the Treasurer of the Court, who shall pay the said several salaries out of the proceeds of such fees, and the surplus shall form part of the general fund of the Court; and whenever the net amount of the fees shall not be sufficient to pay the said several salaries, the deficiency shall be made good and paid out of the corporate funds of the said city, or such of them as the said Mayor, Aldermen, and Commons shall think proper and direct.

Clerk of Court to deliver to the Treasurer an account of fees and fines as often as required.

24. And be it enacted, that the Clerk of the Court from time to time, as often as he shall be required so to do by the Treasurer or Judge of the Court, and in such form as the Treasurer or Judge shall require, shall deliver to the Treasurer a full account in writing of the fees received in the Court under the authority of this Act, and a like account of all fines imposed by the Court under the provisions of this Act, and of the expenses of levying the same, and shall pay over to the Treasurer, quarterly or oftener in every year, by order of the Court, the moneys remaining in his hands over and above his own fees and such balance as he shall be allowed, by order of the Court, to retain for the current expenditure of the Court.

25. And be it enacted, that the Treasurer of the Court shall from time to time, quarterly or oftener, as shall be directed by order of the Court, audit and settle the accounts of the Clerk and other officers of the Court, and shall receive the balance of the various moneys which such Clerk and other officers shall have received under this Act, and shall pay over to the Judge of the Court the amount of his fees, and make all such other payments as it shall be requisite to make thereout in accordance with the provisions of this Act, and shall from time to time carry the balance remaining in his hands, or so much thereof as he shall be directed to carry, to such account as the Mayor, Aldermen, and Commons shall direct.

Treasurer to audit accounts of Clerk, and receive balances from time to time.

26. And be it enacted, that the Treasurer of the Court shall, once in every year, and oftener if required, on such day as the Mayor, Aldermen, and Commons from time to time shall appoint, render to the Mayor, Aldermen, and Commons a true account in writing of all moneys received and of all moneys disbursed by him on account of the Court during the period comprised in such account, in such form, and with such particulars of receipt and disbursement, or otherwise, as the Mayor, Aldermen, and Commons shall from time to time require.

Treasurer of Court to render accounts to mayor, &c. when required.

27. And be it enacted, that the Mayor, Aldermen, and Commons shall from time to time make such rules as to them shall seem meet for securing the balances and other sums of money in the hands of any officer of the Court, and for the due accounting for and application of all such balances and other sums of money.

Mayor, &c. to direct how balances shall be applied.

28. And be it enacted, that the Clerk of the Court shall, once in every year, and oftener if required, on such days as shall be appointed by the Mayor, Aldermen and Commons, make out and send to the Mayor, Aldermen, and Commons an account of all sums paid over by him to the Treasurer of the Court, including all unclaimed balances carried to the account of the general fund as hereinafter provided; and every such account, duly vouched by receipts given under the hand of the Treasurer, shall be a voucher to charge the Treasurer in his account before the Mayor, Aldermen, and Commons.

Clerk to send to mayor, &c. accounts of all sums paid by him to Treasurer.

Mayor, &c. may provide Court-houses, offices, &c.

29. And be it enacted, that it shall be lawful for the Mayor. Aldermen, and Commons, if they shall think proper so to do, to build, purchase, or otherwise provide messuages and lands with all necessary appurtenances fit for holding the Sheriffs' Court therein, as well for the purposes of this Act as for the other purposes of the said Court, and for the offices necessary for carrying on the business of the said Court; or, instead of providing separate buildings, may contract with any person, being the owner of or having the control and management of any building, for the use and occupation thereof, or of so much thereof as may be needed for the purposes of the said Court, and subject to such annual rent, and to such conditions as to the repairs, alterations, or improvements of such building, as may be agreed upon; and all lands, messuages, and other real and personal estates and effects belonging to the said Court shall vest in the Mayor and Commonalty and Citizens of the City of London, in trust for the purposes of the said Court.

Any gaol in the City of London may be used as a prison for the purposes of this Act.

30. And be it enacted, that it shall be lawful for the Court to use as a prison for the purposes of the Court any prison within the City of London and the liberties thereof now or hereafter to be used as a prison for debtors, which the said Mayor, Aldermen, and Commons may from time to time approve of, and such prison shall for the purposes of this Act be deemed a common gaol of the City of London.

8 & 9 Vict. c. 18, as to purchase of land to apply to this Act.

31. And be it enacted, that the provisions of the Lands Clauses Consolidation Act, 1845, shall apply to the purchase of lands by the Mayor, Aldermen, and Commons for the purposes of the Sheriffs' Court, except so much thereof as relates to the purchase and taking of lands otherwise than by agreement; and in construing the said Act the Mayor, Aldermen, and Commons shall be deemed the promoters of the undertaking for which such lands are required.

Mayor, &c. empowered to borrow money for the purposes of this Act.

32. And be it enacted, that for the purpose of defraying the expenses of building, purchasing, or providing any messuages and lands for the purposes aforesaid, it shall be lawful for the Mayor, Aldermen, and Commons to borrow and take up at interest so much money as they shall find to be necessary, and to enter into and execute such securities as may be required; and the securities so entered into shall be binding on them, and

on the Treasurer of the Court and his successors in the office of Treasurer, for securing repayment of the moneys borrowed, with interest for the same, out of the general fund hereinafter mentioned; and the Treasurer shall enter in a book belonging to the Court, to be kept by him for that purpose, the names of the several persons by whom any money shall be advanced for the purpose aforesaid in the order in which the same shall be advanced; and the moneys so borrowed shall be paid off in the same order.

A general fund to be raised for paying off money borrowed.

33. And be it enacted, that for raising a fund for providing a building fit for holding the Sheriffs' Court therein, and offices, and for paying off any moneys which may be borrowed as aforesaid, and the interest due in respect thereof, the Clerk of the Court, while it shall be necessary to raise such fund, shall demand and receive from the plaintiff in any suit brought in the Court under the provisions of this Act the sum of sixpence when the debt or damage claimed shall exceed twenty shillings and shall not exceed forty shillings, and for every claim exceeding forty shillings one twentieth part thereof, neglecting any sum less than sixpence in estimating such twentieth part, or such other sum, in either case not exceeding the rates hereinbefore mentioned, as the Mayor, Aldermen, and Commons from time to time shall order, which sum, if not paid in the first instance by the plaintiff upon suit brought in the Court, may be deducted from the sum recovered for the plaintiff, and shall be considered as costs in the cause; and the Clerk of the Court shall keep an account of all moneys so paid to him, and shall pay over the amount from time to time to the Treasurer of the Court; and the amount thereof shall accumulate to form a fund, to be called "The General Fund of the Sheriffs' Court of the City of London," and shall be applied in the first place toward paying the interest of the several sums so borrowed, and in the second place toward paying the rent and other expenses necessarily incurred in holding the Court, and in the third place toward paying off the several principal sums borrowed in the order in which they were borrowed, and in the fourth place toward defraying the other expenses herein charged on the said general fund, in such manner as the Mayor, Aldermen, and Commons shall direct; and the surplus which shall from time to time accumulate, after providing for all the

said expenses, shall be paid over to the credit of the Mayor and Commonalty and Citizens of the City of London, subject nevertheless to any charge which may arise from any future deficiency in the same fund.

Property of Court of Requests to vest in the Treasurer of the Court under this Act.

34. And be it enacted, that from and after the commencement of this Act all moneys and securities for money, and other property and effects of any kind whatsoever, in the hands of the Commissioners, Clerks, Treasurers, Trustees, or other officers of the Court of Requests hereby abolished, shall be paid, transferred, and delivered to the Treasurer, under the provisions of this Act, of the Court, or to such person as he shall appoint to receive the same, and shall be applied in discharging all claims and demands to which the same were liable in the hands of such Commissioners, Clerks, Treasurers, Trustees, or other officers; and the residue thereof shall be applied to the same purposes to which the general fund is applicable.

If separate Court-house established, the Clerk to have the charge thereof, and to appoint and dismiss servants, &c.

35. And be it enacted, that if a separate Court-house shall be built, purchased, or hired for the purposes of the Sheriffs' Court, the Clerk of the Court shall have the care of such Court-house and offices of the Court, and shall appoint, and have power to dismiss, the necessary servants for taking charge of such Court-house and offices, at such salaries as shall be from time to time authorized by the Judge, with the consent of the Mayor, Aldermen, and Commons; and the Clerk of the Court, under the direction of the Mayor, Aldermen, and Commons, and subject to such regulations as they may require to be enforced, shall in every case make all necessary contracts, or otherwise provide, for repairing and furnishing, and for cleaning, lighting, and warming the Court-house for the time being and offices, and for supplying the said Court and offices with law and office books and stationery, and for defraying all other necessary expenses, not otherwise provided for, incident to the holding of the Court; and the charge of the Court-house and offices, and expenses thereby incurred, shall be paid out of the general fund of the Court; provided always, that the Treasurer or Clerk of the Court, or the partner of such Treasurer or Clerk, or any person in the service or employment of such Treasurer or Clerk, shall not be directly or indirectly concerned

or interested in any such contract, or in supplying any articles for the use of the Court and offices; provided also, that no payment of any such charge shall be allowed in the Clerk's accounts until allowed under the hand of the Judge.

Judge to hold the Court where Mayor, &c. shall direct.

36. And be it enacted, that the Judge of the Sheriffs' Court shall attend and hold the said Court for the purposes of this Act at the place where the Mayor, Aldermen, and Commons shall have ordered that the said Court shall be holden, at such times as they shall appoint for that purpose, so that a Court shall be holden for the purposes of this Act once at least in every calendar month; and notice of the days on which the Court will be holden for the purposes of this Act shall be put up in some conspicuous place in the Court and in the office of the Clerk of the Court, and no other notice thereof shall be needed; and whenever any day so appointed for holding the Court shall be altered, notice of such intended alteration, and of the time when it will take effect, shall be put up in some conspicuous place in the Court and in the Clerk's office.

Notices for holding Courts to be put up in the Court and in the Clerk's office.

Process of the Court to be under seal.

37. And be it enacted, that a seal shall be made for the Sheriffs' Court for the purposes of this Act; and all summonses and other process issuing out of the said Court, under the provisions of this Act, shall be sealed or stamped with the seal of the Court; and every person who shall forge the seal or any process of the Court, or who shall serve or enforce any such forged process knowing the same to be forged, or deliver or cause to be delivered to any person any paper falsely purporting to be a copy of any summons or other process of the said Court knowing the same to be false, or who shall act or profess to act under any false colour or pretence of the process of the said Court, shall be guilty of felony.

Acts 7 & 8 Vict. c. 96, and 8 & 9 Vict. c. 127. not to extend to this Act.

38. And be it enacted, that none of the provisions and enactments of an Act passed in the eighth year of the reign of Her present Majesty, intituled "An Act to amend the Laws of Insolvency, Bankruptcy, and Execution," or of an Act passed in the ninth year of the reign of Her said Majesty, intituled "An Act for the better securing the Payment of Small Debts," shall extend or relate to or affect the jurisdiction and practice of the Sheriffs' Court in any action or proceeding to be commenced or carried on therein under the powers and provisions of this Act.

Suits to be by plaint.

39. And be it enacted, that on the application of any person desirous to bring a suit in the Court, the Clerk of the Court shall enter in a book, to be kept for this purpose in his office, a plaint in writing stating the names and the last known places of abode of the parties, and the substance of the action intended to be brought, every one of which plaints shall be numbered in every year according to the order in which it shall be entered; and thereupon a summons, stating the substance of the action, and bearing the number of the plaint on the margin thereof, shall be issued under the seal of the Court, according to such form, and be served on the defendant so many days before the day on which the Court shall be holden at which the cause is to be tried, as shall be directed by the rules made for regulating the practice of the Court, as hereinafter provided; and delivery of such summons to the defendant, or in such other manner as shall be specified in the Rules of Practice, shall be deemed good service; and no misnomer or inaccurate description of any person or place in any such plaint or summons shall vitiate the same, so that the person or place be therein described so as to be commonly known.

Summons may issue, though cause of action may not arise in the city.

40. And be it enacted, that such summons may issue, provided the defendant or one of the defendants shall dwell or carry on his business within the City of London or the liberties thereof at the time of the action brought, or provided the defendant or one of the defendants shall have dwelt or carried on his business therein at some time within six calendar months next before the time of the action brought, or if the cause of action arose therein.

Precincts, &c. within the City of London, &c. to be deemed parts thereof.

41. And be it enacted, that all precincts and extra-parochial places within the City of London or the liberties thereof, or adjoining thereto, shall, for the purposes of this Act, be deemed to be parts of the City of London and the liberties thereof.

Processes out of district of Court may be served by Bailiff of any other Court.

9 & 10 Vict. c. 95.

42. And be it enacted, that any summons or other process which under this Act shall be required to be served out of the City of London or the liberties thereof may be served by the Bailiff of any Court holden in any part of England, under an Act passed in the ninth and tenth years of the reign of Her present Majesty, intituled "An Act for the more easy Recovery of Small Debts and Demands in England," and such service shall

be as valid as if the same had been made under the provisions of this Act by the Bailiff of the Sheriffs' Court within the City of London or the liberties thereof.

As to service of process of County Courts in the City of London.

43. And be it enacted, that any summons or other process which under the before-mentioned Act for the more easy Recovery of Small Debts and Demands in England and Wales shall be required to be served out of the district of the Court from which the same shall have issued may be served within the City of London or the liberties thereof by the Bailiff of the Sheriffs' Court; and such service shall be as valid as if the same had been made by the Bailiff of the Court out of which such summons or other process shall have issued within the jurisdiction of the Court for which he acts.

Sect. 44. Same as sect. 62 of 9 & 10 Vict. c. 95, p. xxx.
Sect. 45. *Ib.* sect. 63, p. xxx.
Sect. 46. *Ib.* sect. 64, p. xxx.
Sect. 47. *Ib.* sect. 65, p. xxx.
Sect. 48. *Ib.* sect. 66, p. xxxi.
Sect. 49. *Ib.* sect. 67, p. xxxi.
Sect. 50. *Ib.* sect. 68, p. xxxi.
Sect. 51. *Ib.* sect. 69, p. xxxi.
Sect. 52. *Ib.* sect. 70, p. xxxi.
Sect. 53. *Ib.* sect. 71, p. xxxii.
Sect. 54. *Ib* sect. 72, p. xxxii.
Sect. 55. *Ib.* sect. 73, p. xxxiii.
Sect. 56. *Ib.* sect. 74, p. xxxiii.
Sect. 57. *Ib.* sect. 75, p. xxxiii.
Sect. 58. *Ib.* sect. 76, p. xxxiii.
Sect. 59. *Ib.* sect. 77, p. xxxiv.

Forms of procedure in Courts to be framed by the Recorder, &c.

60. And be it enacted, that the Recorder for the time being of the said city, the Common Serjeant for the time being of the said city, and the Judge for the time being of the Sheriffs' Court, shall have power and they are hereby required from time to time to make and issue all the general rules for regulating the practice and proceedings of the Court, and also to frame forms for every proceeding in the Court for which they shall think it necessary that a form be provided, and also for

keeping all books, entries, and accounts to be kept by the Clerk of the Court, and from time to time to alter any such rules or forms, and the rules so made and the forms so framed shall be observed and used in the Court; and in any case not expressly provided for herein or by the said rules, the general principles of practice in the Superior Courts of Common Law may be adopted and applied, at the discretion of the Judge, to actions and proceedings in the Court under the provisions of this Act.

Forms of procedure to be approved by the Chief Justices.

61. Provided always, and be it enacted, that no such general rules and forms shall be in force until the same shall have been approved by the Lord Chief Justice of the Court of Queen's Bench, the Lord Chief Justice of the Court of Common Pleas, and the Lord Chief Baron of the Court of Exchequer, or one of them.

Sect. 62. Same as sect. 79 of 9 & 10 Vict. c. 95, p. xxxv.
Sect. 63. *Ib.* sect. 80, p. xxxv.
Sect. 64. *Ib* sect. 81, p. xxxv.
Sect. 65. *Ib.* sect. 82, p. xxxvi.
Sect. 66. *Ib.* sect. 83, p. xxxvi.
Sect. 67. *Ib.* sect. 84, p. xxxvi.
Sect. 68. *Ib.* sect. 85, p. xxxvi.
Sect. 69. *Ib.* sect. 86, p. xxxvii.
Sect. 70. *Ib.* sect. 87, p. xxxvii.
Sect. 71. *Ib.* sect. 88, p. xxxvii.
Sect. 72. *Ib.* sect. 89, p. xxxvii.
Sect. 73. *Ib.* sect. 90, p. xxxviii.

No actions to be removed into the Lord Mayor's Court, or the Court of Hustings, or to be heard before the Lord Mayor by markment, &c.

74. And be it enacted, that no plaint entered in the Court under the provisions of this Act, or by this Act directed to be continued therein, shall in any case be removed or removable from the Court by writ of *levetur querela*, or any other writ or process, into the Court of our Lady the Queen holden before the Lord Mayor and Aldermen in the chamber of the Guildhall of the City of London, or into the Court of Hustings in the City of London, nor be liable to be reheard or examined by the Lord Mayor of the City of London by markment or other customary process.

75. And be it enacted, that no person shall be entitled to appear for any other party to any proceeding in the Court unless he be an Attorney of one of Her Majesty's Superior Courts of Record, or a Barrister-at-Law, instructed by such Attorney on behalf of the party, or, by leave of the Judge, any other person allowed by the Judge to appear instead of such party; but no Barrister, Attorney, or other person, except by leave of the Judge, shall be entitled to be heard to argue any question, as counsel for any other person, in any proceeding in the Court; and no person, not being an Attorney admitted to one of Her Majesty's Superior Courts of Record shall be entitled to have or recover any sum of money for appearing or acting on behalf of any other person in the Court; and the Judge shall have power, and he is hereby required, from time to time, to settle and regulate the fees to be taken by barristers-at-law and attorneys practising in the Court, and in what cases the expense of employing barristers and attorneys shall be allowed on taxation of costs.

Who may appear for any party in the Court.

Sect. 76. Same as sect. 92 of 9 & 10 Vict. c. 95, p. xxxviii.
Sect. 77. *Ib.* sect. 93, p. xxxix.
Sect. 78. *Ib.* sect. 94, p. xxxix.
Sect. 79. *Ib.* sect. 95, p. xxxix.
Sect. 80. *Ib.* sect. 96, p. xxxix.
Sect. 81. *Ib.* sect. 97, p. xl.
Sect. 82. *Ib.* sect. 98, p. xl.
Sect. 83. *Ib.* sect. 99, p. xli.
Sect. 84. *Ib.* sect. 100, p. xlii.
Sect. 85. *Ib.* sect. 101, p. xlii.
Sect. 86. *Ib.* sect. 102, p. xlii.
Sect. 87. *Ib.* sect. 103, p. xliii.
Sect. 88. *Ib.* sect. 104, p. xliii.

89. And be it enacted, that in all cases where a warrant of execution shall have issued against the goods and chattels of any party, or an order for his commitment shall have been made under the before-mentioned Act for the more easy recovery of small debts and demands in England, and such party or his goods and chattels shall be or believed to be within the City of London or the liberties thereof, it shall be lawful for the High

How execution out of any County Court may be had within the Jurisdiction of this Court.

Bailiff of the County Court from which such warrant of execution shall have issued, or by which such order of commitment shall have been made, to send such warrant or order to the Chief Bailiff of the Sheriffs' Court, with a warrant thereunto annexed under the hand of the High Bailiff and the seal of the County Court from which the original warrant or order issued requiring execution of the same, and the Clerk of the Sheriffs' Court shall seal or stamp the same with the seal of the Court holden under the provisions of this Act, and shall issue the same to the Chief Bailiff of the Court; and thereupon such Chief Bailiff shall be authorized and required to act in all respects as if the original warrant of execution or order of commitment had been directed to him by the Court holden under the authority of this Act, and shall, within such time as shall be specified in the Rules of Practice, return to the High Bailiff of the County Court from which the same originally issued what he shall have done in the execution of such process, and in case a levy shall have been made shall, within such time as shall be specified in the Rules of Practice, pay over all moneys received in pursuance of the warrant to the High Bailiff of the Court from which the same shall have originally issued, retaining the fees for execution of the process; and where any order of commitment shall have been made, and the person apprehended, mentioned in such order, shall be within the City of London or the liberties thereof, he shall be forthwith conveyed, in the custody of the Bailiff or officer apprehending him, to some gaol, house of correction, or other prison within the City of London or the liberties thereof, and kept therein for the time mentioned in the warrant of commitment, unless sooner discharged under the provisions of the before-mentioned Act for the recovery of small debts and demands in England.

Sect. 90. Same as sect. 105 of 9 & 10 Vict. c. 95, p. xliv.
Sect. 91. *Ib.* sect. 106, p. xliv.
Sect. 92. *Ib.* sect. 107, p. xlv.

No execution shall be stayed by writ of error.

93. And be it enacted, that no judgment or execution shall be stayed, delayed, or reversed upon or by any writ of error or supersedeas thereon to be sued for the reversing of any judgment given in the Court.

Sect. 94. Same as sect. 109 of 9 & 10 Vict. c. 95, p. xlvi.

95. And be it enacted, that any person imprisoned under this Act who shall have paid or satisfied the debt or demand, or the instalments thereof payable, and costs, remaining due at the time of the order of imprisonment being made, together with the costs of obtaining such order, and all subsequent costs, shall be discharged out of custody, upon the certificate of such payment or satisfaction, signed by the Clerk of the Court, by leave of the Judge of the Court. Debtor to be discharged from custody upon payment of debt and costs.

Sect. 96. Same as sect. 111 of 9 & 10 Vict. c. 95, p. xlvi.
Sect. 97. *Ib.* sect. 112, p. xlvii.
Sect. 98. *Ib.* sect. 113, p. xlvii.
Sect. 99. *Ib.* sect. 114, p. xlviii.
Sect. 100. *Ib.* sect. 115, p. xlviii.
Sect. 101. *Ib.* sect. 116, p. xlviii.
Sect. 102. *Ib.* sect. 117, p. xlix.
Sect. 103. *Ib.* sect. 118, p. xlix.

104. And be it enacted, that all actions of replevin in cases of distress for rent in arrear or damage *feasant* may be brought in the Court without writ, and shall not be removable into any other Court, unless the rent or damage in respect of which the distress shall have been taken shall be more than twenty pounds, or unless the title to any corporeal or incorporeal hereditament or leasehold premises, or to any toll, market, fair, or other franchise, or to the whole or any part of the distress, shall be in question in any such action. Actions of replevin may be brought in the Court

Sect. 105. Same as sect. 121 of 9 & 10 Vict. c. 95, p. l.
Sect. 106. *Ib.* sect. 122, p. li.
Sect. 107. *Ib.* sect. 123, p. lii.
Sect. 108. *Ib.* sect. 124, p. lii.
Sect. 109. *Ib.* sect. 125, p. lii.
Sect. 110. *Ib.* sect. 126, p. liii.
Sect. 111. *Ib.* sect. 127, p. liii.

112. And be it enacted, that all actions and proceedings which before the passing of this Act might have been brought in any of Her Majesty's Superior Courts of Record, where the Concurrent Jurisdiction with Superior Courts.

plaintiff dwells more than twenty miles from the defendant, or where any officer of the Court holden under the provisions of this Act shall be a party, except in respect of any claim to any goods and chattels taken in execution of the process of the Court, or the proceeds or value thereof, may be brought and determined in any such Superior Court, at the election of the party suing or proceeding, as if this Act had not been passed.

Sect. 113. Same as sect. 129 of 9 & 10 Vict. c. 95, p. liv.
Sect. 114. *Ib.* sect. 130, p. liv.
Sect. 115. *Ib.* sect. 131, p. liv.
Sect. 116. *Ib.* sect. 132, p. lv.
Sect. 117. *Ib.* sect. 133, p. lv.
Sect. 118. *Ib.* sect. 134, p. lv.
Sect. 119. *Ib.* sect. 135, p. lvi.
Sect. 120. *Ib* sect. 136, p. lvi.
Sect. 121. *Ib.* sect. 137, p. lvi.
Sect. 122. *Ib.* sect. 138, p. lvi.
Sect. 123. *Ib.* sect. 139, p. lvii.

Act not to affect Court of Hustings or Lord Mayor's Court.

124. And be it enacted, that nothing in this Act contained shall be construed to alter or affect the Court of Hustings in the said City of London, or the Court of our Lady the Queen holden before the Lord Mayor and Aldermen in the Chamber of the Guildhall of the City of London, or to take away, lessen, or diminish the powers and jurisdictions of the said Courts or either of them.

Interpretation of Act.

125. And be it enacted, that in construing this Act the word "person" shall be understood to mean a body politic, corporate, or collegiate, as well as individual; and every word importing the singular number shall, where necessary to give full effect to the enactments herein contained, be understood to mean several persons or things as well as one person or thing; and every word importing the masculine gender shall, where necessary, be understood to mean a female as well as a male; and the words "Mayor, Aldermen, and Commons," shall be understood to mean the Mayor, Aldermen, and Commons in common council assembled: and the words "the Court" shall be understood to mean the Sheriffs' Court holden under the provisions and for

the purposes of this Act; and the term "Landlord" shall be understood to mean the person entitled to the immediate reversion of the lands, or, if the property be holden in joint tenancy, coparcenary, or tenancy in common, shall be understood to mean any one of the persons entitled to such reversion; and the word "Clerk" shall be understood to mean "Chief Clerk" or "Registrar;" and the words "Attorney-at-Law" shall be understood to include a Solicitor in any Court of Equity; and the word "Agent" shall be understood to mean any person usually employed by the landlord in the letting of lands, or in the collection of the rents thereof, or specially authorized to act in any particular matter by writing under the hand of such landlord; and the word "Bailiff" shall be understood to include Chief Bailiff; unless in any of these cases there be something in the context inconsistent with such meaning.

126. And be it enacted, that the costs, charges, and expenses attending or incident to the applying for, obtaining, and passing this Act shall be paid and defrayed by, from, and out of the moneys which have from time to time been paid into the Chamber of London on account of the business transacted in the said Court of Requests hereby abolished, or which shall be paid to the Treasurer of the Court to be holden under this Act. Expenses of Act.

127. And be it enacted, that this Act shall commence and take effect on the twenty-ninth day of September next after the passing hereof. Commencement of Act.

128 And be it enacted, that this Act shall be a Public Act, and shall be judicially taken notice of as such. Public Act.

Schedule (A) same as Schedule (D) of 9 & 10 Vict. c. 95, *ante*, pp. lxiii—lxv.

RULES OF PRACTICE AND FORMS

FOR THE

COUNTY COURTS IN ENGLAND.

WHEREAS by an Act made and passed in the session of Parliament held in the ninth and tenth years of the reign of Her present Majesty, intituled "An Act for the more easy Recovery of Small Debts and Demands in England," it is amongst other things enacted, that five of the Judges of the Superior Courts of Common Law at Westminster, including the Lord Chief Justice of the Court of Queen's Bench, the Lord Chief Justice of the Court of Common Pleas, and the Lord Chief Baron of the Court of Exchequer, or one of the said Chiefs, at the least, shall have power to make and issue all the general rules for regulating the practice and proceedings of the County Courts holden under the said Act; and also to frame forms for every proceeding in the said Courts for which they shall think it necessary that a form be provided; and also for keeping all books, entries, and accounts, to be kept by the Clerks of the said Courts, and from time to time to alter any such rule or form, and that the rules so made, and the forms so framed, shall be observed and used in all the Courts holden under the said Act.

In pursuance of such power, therefore, it is hereby ordered that the following be the

RULES OF PRACTICE AND FORMS FOR THE COUNTY COURTS IN ENGLAND.

1. Every plaint must be entered upon application at the office of the Clerk, pursuant to the form in the plaint book in the schedule to these rules annexed.

2. On entering the plaint, the plaintiff shall, if the sum sought to be recovered shall exceed 5*l.*, deliver at the office of the Clerk as many copies of a statement of the particulars of his demand or cause of action as there are defendants, with an additional copy to file: provided always, that in all cases, the Judge, in his discretion, and on such terms as he may think fit,

may adjourn the cause at the hearing, for the delivery of a statement of particulars, or further particulars.

3. At the time of entering the plaint, the Clerk of the Court shall give to the plaintiff a note according to the form in the said schedule; and no money shall be paid out of Court to the plaintiff unless on production of such note, or by order of the Judge.

4. The summons to appear to a plaint shall be issued according to the forms in the schedule, and shall be dated as of the day on which the plaint was entered.

5. The Clerk shall annex to each summons to be served, one of the copies of the statement of the particulars of the plaintiff's demand furnished to him pursuant to rule 2, sealed with the seal of the Court.

6. Every such summons must be served ten clear days before the holding of the Court at which it shall be returnable.

7. The service of any summons to appear to a plaint must be either personal, or by delivering the same to some person at the place of abode or the place of business of the defendant.

8. Where a defendant shall be living or serving on board of any ship or vessel, or be residing or quartered in any barracks, and serving Her Majesty as a soldier or marine, it shall be sufficient service to deliver the summons to the senior officer on board, or to the person who may at the time have charge of such ship or vessel, or to the adjutant of the corps, or any officer or sergeant of the company to which such soldier or marine shall belong or be attached.

9. Where a defendant shall be working in any mine or other works carried on under ground, and the bailiff shall not be able to serve him with a summons, as hereinbefore directed, it shall be sufficient service to deliver the summons to the engine-man, banks-man, or other person in charge of such mine or works.

10. Where any defendant shall, by keeping his house or place of abode closed, or by violence or threats prevent any Bailiff from serving the summons as hereinbefore directed, and such summons shall have been affixed on the door of such house or place of abode, or otherwise served as nearly as may be according to the mode hereinbefore directed, such service shall be deemed good service.

11. Provided that in all cases where a summons to appear to a plaint shall not have been served personally, and the defendant shall not appear at the return day, it must be proved to the satisfaction of the Judge, that

the service of such summons has come to the knowledge of the defendant ten clear days before the said return day.

12. Where any such summons has not been served as hereinbefore directed, the Judge may, in his discretion, in order to save the Statute of Limitations, direct another summons, or successive summonses to be issued, bearing the same date and number as the first summons.

13. The Bailiff who serves a summons to appear to a plaint shall endorse on a copy of such summons the time and manner of the service thereof, and shall produce such copy, so endorsed, at the Court at which such summons shall be returnable, and such copy shall be filed by the Clerk of the Court.

14. The above rules, except rule 11, as to the mode of service of summonses to appear to a plaint, shall apply to the service of all summonses, judgments, orders, notices, and process, whatsoever, issuing under the authority of the said Act, except where otherwise directed by the said Act, or any rule made under the authority thereof.

15. Where the defendant pays money into Court, the same must be paid into Court five clear days before the return of the summons.

16. If the plaintiff elect to accept in full satisfaction of the debt or damages claimed, such part thereof as shall have been paid into Court by the defendant, and shall give a written notice to that effect to the Clerk of the Court and a like notice to the defendant by serving the same on such defendant personally or leaving it at his place of abode or business, three clear days before the return of the summons, the action shall be discontinued, and the plaintiff shall not be liable to any further costs. But in default of giving such notice, the suit will proceed: and if the plaintiff do not appear at the hearing, he shall be liable to pay to the defendant such costs as he may incur in appearing to try the cause, or such other sum of money as the Judge may order.

17. Where a defendant desires to set off any debt or demand alleged to be due to him by the plaintiff, he must give notice thereof in writing to the Clerk of the Court, and deliver to such Clerk two copies of a statement of the particulars of such set-off five clear days before the return of the summons.

18. The Clerk of the Court shall give to the plaintiff a notice of such set-off, according to the form in the schedule, in manner directed by the Act, together with one of the copies of such particulars of set-off, sealed with the seal of the Court: provided always, that where such notice shall not have been given, the Judge, in his discretion and on such terms as he

shall think fit, may adjourn the hearing of the cause, to enable the defendant to give such notice such number of days before the day to which the hearing may be adjourned, as the Judge shall think proper.

19. Where a defendant intends to rely on the special defence of infancy, coverture, the Statute of Limitations, or his discharge under any statute relating to bankrupts, or any Act for the relief of insolvent debtors, he shall give notice thereof in writing to the Clerk of the Court, five clear days before the day on which the summons is returnable: provided always, that where such notice shall not have been given, the Judge, in his discretion, and on such terms as he shall think fit, may adjourn the hearing of the cause, to enable the defendant to give such notice such number of days before the day to which the hearing may be adjourned, as the Judge may think proper.

20. Every notice of a demand of a Jury, where the debt or demand claimed shall exceed five pounds, must be made in writing to the Clerk of the Court, two clear days before the return of the summons.

21. No application for a new trial, or to set aside any proceedings, shall be made subsequently to the Court at which such trial or other proceeding shall have been had unless the party making such application shall have given a written notice thereof to the Clerk of the Court at his office, and to the other party, by serving the same personally on such party, or leaving the same at his usual place of abode or business, seven clear days before the time of holding the Court at which such application shall be made.

22. Where any money is paid into Court under any execution or order of the Court, if the Clerk receive notice from any party of his intention to apply to the Court to set aside the execution or order under which such money is paid into Court, the Clerk shall retain the same, until after such application has been determined, or until the Judge shall otherwise order.

23. When any order is made for the payment of any debt, damages, costs, or other sum of money by instalments, such instalments shall be payable at the office of the Clerk of the Court, at such periods as the Court shall order; and if no order be made, then the first shall become due at the expiration of one calendar month from the day of making the order, and every successive instalment at like periods of a calendar month from the day of the previous instalment becoming due.

24. Where any cattle, goods, or chattels, taken as a distress for rent in arrear, or damage feasant, shall have been replevied by the Sheriff, the party at whose instance such replevin shall have been made, shall enter his plaint

in the Court held under the authority of this Act, for the district within which such distress may have been made.

25. On entering a plaint in replevin, the plaintiff must specify and describe in a statement of particulars, the cattle, or the several goods and chattels taken under the distress and of the taking of which he complains.

26. All actions of replevin in cases of distress for rent in arrear, or damage feasant, shall be tried in a summary way as other actions in the Courts held under the authority of this Act, and the judgment therein, in ordinary cases, whether for plaintiff or defendant, shall be according to the forms in the schedule, or to the like effect.

27. Execution on a judgment is not to issue by or against any person not a party to such suit, without a plaint and summons upon the judgment. the proceedings in which shall be the same as in ordinary cases.

28. Where a judgment has been given for or against a person deceased, his executors or administrators may in the same manner sue or be sued upon the judgment.

29. The ordinary judgment against executors or administrators shall be, to pay the debt or damages and costs to be levied out of the goods of the deceased in their hands, and as to the costs, if there are no such goods. then to be levied out of their own goods.

30. Where the defence is, that executors or administrators have fully administered, if it be adjudged by the Court that they have assets not administered, then a like judgment shall go as in the above case, but only as to the goods of the deceased, to the amount proved to be in their hands. and of assets *quando acciderint*, as to the residue: the judgment as to costs shall be, that they be levied *de bonis testatoris si, &c. et si non, de bonis propriis*.

31. If the sole defence by executors or administrators be, that they have fully administered, and the judgment of the Court is for the defendants, it shall be, that the amount found to be due be paid and levied out of the assets of the deceased *quando acciderint*, and the costs shall be in the discretion of the Judge.

32. Where judgment has been given against executors and administrators, that the amount be levied upon assets of the deceased *quando acciderint*, the plaintiff may at any time proceed by plaint against them, suggesting that assets have come to their hands, and the Court shall proceed and give judgment thereon, if for the plaintiff, as in rule 29, and if for the defendants, they shall be entitled to their costs.

33. Where judgment has been given that the debt (or damages) and costs be levied *de bonis testatoris*, and the plaintiff complains that the defendants have been guilty of a *devastavit*, inasmuch as no goods of the deceased are forthcoming to satisfy the execution issued, then a summons may be taken out in the form given in the schedule, or to the like effect, and thereupon, as in ordinary cases, the Court shall proceed to the hearing and judgment; and if judgment be given against such executors or administrators, then it shall be that they pay the debt, or damages and costs, to be levied *de bonis testatoris si, &c. et si non, de bonis propriis.*

34. Where, in an action against executors or administrators, the defence is that they are not executors or administrators, or it is founded on some matter or thing arising since the death of the testator, or intestate, *ex. gr.* a release to the defendants, if the judgment of the Court be against them, it shall be, that the debt, or damages, and costs, be levied and paid *de bonis testatoris si, &c. et si non, de bonis propriis.*

35. The Judge shall in each case order what number of witnesses shall be allowed on taxation of costs, the allowance for whose attendance shall be according to the scale in the schedule, unless otherwise ordered, but in no case to exceed such scale.

36. All costs shall be taxed by the Clerk of the Court.

37. No warrant of execution or commitment shall be executed after the expiration of two calendar months from the date thereof.

38. Every summons for a party to appear to be examined upon oath, pursuant to the 98th section of the said Act, shall be served not less than three clear days before the day on which the party is required to appear to such summons: provided always, that service of such summons at any time before the time appointed for the appearance of such party, may be deemed by the Judge to be good service, if it shall be proved to his satisfaction, that such party was about to remove out of the jurisdiction of the Court.

39. Where any claim shall be made to or in respect of any goods or chattels taken in execution under the process of any Court holden under the authority of the said Act, or in respect of the proceeds or value thereof, by any landlord for rent, or by any person not being the party against whom such process has issued, and summonses have been issued on the application of the officer charged with the execution of such process, such summonses shall be served in such time and manner as hereinbefore directed for a summons to appear to a plaint, and the claimant shall be deemed the plaintiff, and the execution creditor the defendant; and the

claimant shall, five clear days before the day on which the summonses are returnable, deliver to the said officer, or leave at the office of the Clerk of the Court, a particular of any goods or chattels alleged to be the property of the claimant, and the grounds of his claim, or in case of a claim for rent, of the amount thereof, and for what period the same is claimed to be due.

40. The Clerk of every Court shall keep the several books, and in the form in the schedule.

41. Every entry in such books shall have a number prefixed, corresponding with the number of the plaint to which it refers.

42. The Clerk of every Court shall have an office at each place where the Court of which he is Clerk is held.

43. All matters or things required to be done by the Clerk of the Court may be done by the Clerk of the Court, or by the Assistant Clerk or Clerks provided by him.

44. The office of the Clerk shall be open daily, and the office hours shall be from ten o'clock in the morning until four in the afternoon.

45. At every Court, or at such other times as the Judge shall require, the High Bailiff shall deliver a statement or return, pursuant to the form in the schedule, of what shall have been done since his last return under every process of execution or commitment, which he shall have been required to execute.

46. Eight days before the day of the holding of the Court, the High Bailiff shall deliver to the Clerk of the Court a list of all summonses to appear which shall have been served, and the Clerk shall forthwith stick up such list in his office.

47. Every High Bailiff required to execute any warrant of execution or commitment issuing out of any other Court, shall make a return to such last-mentioned Court forthwith on the execution thereof; and if he shall not have executed such warrant, he shall return the same at the expiration of two calendar months from the date thereof.

48. Every Bailiff levying or receiving any money by virtue of any process issuing out of the Court of which he is Bailiff, shall, within three days after the receipt thereof, pay over the same to the Clerk of such Court.

49. If any High Bailiff shall have levied or received any money under any process issuing out of any other Court, he shall, within three days from the receipt thereof, pay over such money, retaining the fees for execution thereof, to the High Bailiff of such last-mentioned Court.

50. No such summons, notice, order, or other process shall be served on Sunday, Christmas-day, or Good Friday; but such days shall be counted in the computation of the time required by these rules, unless any of such days shall be the last day of such time, in which case it shall be excluded from such computation.

51. In case of proceedings not provided for by the forms in the schedule, the Clerk of the Court shall issue the necessary process, using, where practicable, the forms prescribed in the schedule as guides in framing the same.

52. Wherever the singular number is used in these rules in reference to persons or things, it shall be understood, when necessary to give full effect to the rule, to mean several persons or things; and every word importing the masculine gender shall in like manner, when necessary, be understood to include the feminine gender.

FRED. POLLOCK.
WM. WIGHTMAN.
C. CRESSWELL.
W. ERLE.
E. V. WILLIAMS.

SCHEDULE OF FORMS.

1.—*Summons to appear to Plaint.*

No. of Plaint,
In the County Court of at
(Seal.)

A. B., Plaintiff,
against
C. D., Defendant.

You are hereby summoned to appear at a County Court to be holden at on the day of at the hour of in the forenoon, to answer the above-named plaintiff in an action on contract [*or in an action for tort*], for [here state the substance of the cause of action]

	£	s.	d.
Debt or claim			
Cost of summons and service			
Paying money into and out of Court, entering satisfaction, &c.			
£			

[*the particulars of which are hereto annexed*, where the cause of action exceeds 5*l.*]; and take notice, that in case you shall have been personally served with this summons, an application may be made immediately after a judgment has been obtained against you, to commit you to prison, under the provisions of the statute in that behalf made and provided, in which case the Judge of the said Court will proceed to hear and determine such application, and make such order thereupon as he shall think fit, whether you shall be then present or not.

Given under the seal of the said Court, this day of 18 .

Clerk of the Court.

To the above-named defendant.

N.B.—See notice at back of this summons.

Notice.

N.B.—If you admit the whole or any part of the plaintiff's demand, by paying into the office of the Clerk of the Court at the amount so admitted, together with the costs, five clear days before the day of appearance, you will avoid any further costs, unless, in case of part payment, the plaintiff at the hearing shall prove a demand against you exceeding the sum so paid into Court.

If you have any defence to the demand, by way of set-off, or on account of your being an infant, or married woman, or by reason of the Statute of Limitations, or of your discharge by bankruptcy, or under any act for the relief of insolvent debtors, the same cannot be admitted unless you give notice thereof in writing, and if a set-off, of the particulars of such set-off, to the Clerk of the Court, at the above-named office, five clear days before the day of hearing.

If the debt or claim exceed five pounds, you may have the cause tried by a jury, on giving notice thereof in writing at the said office of the Clerk two clear days at least before the day of trial, and on payment of the fees for summoning, and payable to such jury.

Notices of defence cannot be served unless the fees for entering and serving the same be paid at the time the notices are given.

You may have a summons to compel the attendance of any witness, and the production of any books or documents, on applying at the office of the Clerk of the Court.

Bring this summons with you when you come to the Court or to the office of the Clerk. Office hours from 10 to 4.

2.—*Summons to a Tenant holding over.*

No.

In the County Court of at

(Seal.)

A. B., Plaintiff,
against
C. D., Defendant.

You are hereby summoned to appear at a County Court to be holden at on the day of at the hour of in the forenoon, to answer to the above-named plaintiff, wherefore you neglect or refuse to quit and deliver up to him possession of a certain [*messuage with appurtenances* or part *of a house, &c.*, as the case may be] situate at . And take notice, if you do not appear at the said Court, and show cause

why you do not quit and deliver up possession as aforesaid, you may, by order of the Court, be turned out of the possession held by you.

Given under the seal of the Court, this day of 18 .

Clerk of the Court.

To the above-named defendant.

3.—*Summons on Devastavit.*

No.

In the County Court of at

(Seal.)

A. B., Plaintiff,

against

C. D., Executor of E. F., deceased, Defendant.

You are hereby summoned to appear at a County Court to be holden at on the day of at the hour of in the forenoon, to answer the above-named plaintiff in an action of contract, for that you, the defendant, have withheld, wasted, and put to your own use, divers goods and chattels which were the property of E. F., deceased, at the time of his death, and which came to the hands of you, the defendant, as executor of the said E. F., to be administered, whereby the judgment recovered against you by the said plaintiff at this Court [or *at the County Court held at in the county of*] on the day of [as the case may be] remains unsatisfied.

And take notice—[Conclude and add notice as in Form 1.]

4.—*Plaintiff's Note on entering Plaint.*

No.*

County Court of at

£ : : fees paid.

The above cause [or *causes*] will be tried at on at o'clock in the forenoon,

To A. B.,
The above-named plaintiff.
Office at

(Signed)
Clerk of the Court.

Hours of attendance from 10 to 4.

Take notice, you must bring this note with you when you come to the

* NOTE.—Where a plaintiff enters several plaints, one note will be sufficient by specifying the numbers of the plaints.

Court, or to the office of the Clerk, for any purpose, and in case of loss of it, you must immediately give notice thereof at my office.

You may have a summons to compel the attendance of any witnesses, or for the production of any books or documents you may require, on early application at the office of the Clerk, and on payment of the expenses thereof.

5.—*Affidavit of service of Summons out of the District, or in case of unavoidable absence of Bailiff.*

No.

In the County Court of at

Between A. B., Plaintiff,
and
C. D., Defendant.

E. F. of one of the Bailiffs of the County Court of [or *of the said Court*], maketh oath and saith, that he did, on the day of duly serve the said with a summons, [*or other process*], a true copy whereof is hereunto annexed, marked at within the jurisdiction of the said County Court of by delivering the same personally to the said C. D. [If the service was not personal, state how served.] E. F.

Sworn before me, &c., the day of

[Indorse the summons or other process, "this paper marked is the paper referred to in the annexed affidavit."]

6.—*Notice of Payment of the whole Claim.*

No.

In the County Court of at

(Seal.)

Between A. B., Plaintiff,
and
C. D., Defendant.

I do hereby give you notice, that the above-named defendant has paid into Court the sum of being the full amount of your demand in this action, together with the costs incurred by you therein.

Given under the seal of the Court this day of 18 .

Clerk of the Court.

To the above-named plaintiff.

7.—*Payment of part of the Claim into Court.*

No.

In the County Court of at

(Seal.) Between A. B., Plaintiff,

and

C. D., Defendant.

Take notice, that the sum of £ has been paid into Court by the above-named defendant, together with the sum of £ for the costs incurred by you up to the time of such payment; and in case you shall accept the same in full satisfaction of your demand, you must give a written notice to that effect to the Clerk of the Court, and a like notice to the said defendant, by serving the same on him personally, or by leaving it at his place of abode or business, three clear days before the day of trial, otherwise you will be liable to pay to the said defendant such costs as he may incur in this action after payment into Court, as aforesaid.

Given under the seal of the Court this day of 18 .

Clerk of the Court.

To the above-named plaintiff.

8.—*Notice of Set-off.*

No.

In the County Court of at

(Seal.) Between A. B., Plaintiff,

and

C. D., Defendant.

The above-named defendant has given notice that he will, at the hearing of this cause, claim a set-off against any debt or demand to be proved against him by you, and the particulars of such set-off are annexed hereto

Given under the seal of the Court this day of 18 .

Clerk of the said Court.

To the above-named plaintiff.

[Annex to this notice the particulars of set-off as furnished by the defendant, sealed with the seal of the Court.]

9.—*Notice of other Defences.*

No.

In the County Court of at

(Seal.)

Between A. B., Plaintiff,
and
C. D., Defendant.

Take notice, that upon the hearing of this cause the defendant intends to give in evidence and rely upon the following ground of defence, in answer to the action.

Dated this day of 18 .

Clerk of the said Court.

To A. B., the above-named plaintiff.

1. That he, the defendant, was an infant within the age of twenty-one years when the supposed claim arose [*or the supposed contract or agreement was made*].

2. That she, the defendant, was, at the time when the supposed claim arose [or *of making the supposed contract or agreement,*] the wife of of .

3. That the claim for which he, the defendant, has been summoned, is barred by the Statute of Limitations.

4. That the defendant is a certificated bankrupt, and obtained his certificate before the commencement of this suit.

5. That the defendant was duly discharged under an Act for the relief of insolvent debtors, on the day of at a court held at .

10.—*Summons to Jurors.*

No.

In the County Court of at

(Seal.)

You are hereby summoned to appear and serve as a juror in this Court, at on the day of at the hour of upon the trial of the several cases to be then and there tried by juries, and in default of attendance you will be liable to a penalty of 5*l.* by the statute of 9 & 10 Vict. c. 95.

Given under the seal of the Court this day of 18 .

Clerk of the said Court.

To of

11.—*Clerk's Notice of Jury.*

No.

In the County Court of at

(Seal.) Between A. B., Plaintiff,

and

C. D., Defendant.

Take notice, that the above-named cause will be tried by a jury, the above-named having demanded a jury therein.

Clerk of the Court.

To the above-named

12.—*Summons to Witness.*

No.

In the County Court of at

(Seal.) Between A. B., Plaintiff,

and

C. D., Defendant.

You are hereby required to attend at [*the Court-house*] at on the day of at the hour of to give evidence in the above cause on behalf of the above-named [*and then and there to have and produce* (state any particular documents required) *and all other books, papers, writings, and other documents relating to the said action, which may be in your custody, possession, or power*]. In default of your attendance, you will be liable to a penalty of 10*l.* under the statute of 9 & 10 Vict. c. 95.

Given under the seal of the Court this day of 18 .

Clerk of the said Court.

To of

13.—*Order for Payment of Penalty by a Witness.*

No.

In the County Court of at

(Seal.) Between A. B., Plaintiff,

and

C. D., Defendant.

Whereas it has been made to appear to the Court that E. F., of was duly summoned to be and appear as a witness in this action, at a County Court at on the day of [*and also to produce*, as the case may be], and that payment [or *a tender of*

payment] of his reasonable expenses was duly made to him the said E. F.: And whereas the said E. F. did not appear, &c., on, &c., in obedience to the said summons [or *having appeared in pursuance of the said summons, did wilfully refuse to be sworn and to give evidence in the said action* (or *to produce such, &c.*)]:

Now the said Court doth hereby order that the said E. F. shall pay a fine of £ for such neglect [or *refusal*] to the Clerk of this Court, on or before the day of [or *forthwith*]; and that the sum of £ part of the said fine, shall be paid by the said Clerk to the in this action, being the party injured by such neglect [or *refusal*] of the said E. F.

Given under the seal of the Court this day of 18 .

By the Court,

Clerk.

14.—*Order for Costs to Defendant where Plaintiff does not appear.*

No.

In the County Court of at

(Seal.)

Between A. B., Plaintiff,

and

C. D., Defendant.

Upon hearing the defendant in this action, and it appearing to the Court here that the plaintiff therein has not appeared at this Court on the day of (being the day appointed for the trial thereof) to prosecute the same against the defendant, it is awarded and ordered by the Judge of the said Court that the sum of £ shall be paid by the plaintiff to the defendant forthwith [or *on or before the day of*], by way of costs and satisfaction for his trouble and attendance in that behalf.

Given under the seal of the Court this day of 18 .

By the Court,

Clerk.

15.—*Order to adjourn Proceedings.*

No.

In the County Court of at

(Seal.)

Between A. B., Plaintiff.

and

C. D., Defendant.

It is ordered, that the trial of this action be adjourned until upon [here state the terms and conditions of the adjournment, if any].

Given under the seal of the Court this day of 18 .

By the Court,

Clerk.

16.—*Order to suspend Order or Judgment.*

No.

In the County Court of at

(Seal.)

Between A. B., Plaintiff,

and

C. D., Defendant.

It is ordered, that an order of this Court bearing date [or *the judgment herein.* or *execution herein issued against the goods or person of the defendant*] be suspended until [*upon payment of costs by*]

Given under the seal of the Court this day of 18 .

By the Court,

Clerk.

17.—*Order to rescind a former Order.*

No.

In the County Court of at

(Seal.)

Between A. B., Plaintiff,

and

C. D., Defendant.

It is ordered that a certain order of this Court in this action, bearing date the day of be rescinded.

Given under the seal of the Court this day of 18 .

By the Court,

Clerk.

18.—*Order to stay Proceedings.*

No.

In the County Court of at

(Seal.)

Between A. B., Plaintiff,

and

C. D., Defendant.

It is ordered, that all further proceedings in this action be stayed.

Given under the seal of the Court this day of 18

By the Court,

Clerk.

19.—*Order for a New Trial.*

No.

In the County Court of at

(Seal.) Between A. B., Plaintiff,

and

C. D., Defendant.

It is ordered, that the judgment in this case, and all subsequent proceedings thereon be set aside, and a new trial had between the parties on [set out the terms or conditions, if any, on which the order is made].

Given under the seal of the Court this day of 18 .

By the Court,

Clerk.

20.—*Summons to Plaintiff on Interpleader.*

No.

In the County Court of at

(Seal.) Between A. B., Plaintiff,

and

C. D., Defendant.

Whereas of hath made a claim to certain goods and chattels [or *money, &c.*, or *for certain rent due, &c.*], which have been seized and taken in execution under and by virtue of process issuing out of this Court, in this action; you are therefore hereby summoned and required to be and appear before the Judge of the said Court, at on at the hour of in the forenoon, when the said claim will be adjudicated upon, and such order made thereupon as to the Judge shall seem fit.

Given under the seal of the Court this day of 18 .

Clerk of the said Court.

To the above-named plaintiff.

Note.—The claimant is called upon to give the particulars of his claim, which you may inspect on application at the office of the Clerk of the Court four days before the day of hearing.

21.—*Interpleader Summons to Claimant.*

No.

In the County Court of at

(Seal.) Between A. B., Plaintiff,
and
C. D., Defendant.

You are hereby summoned and required to appear at a Court to be holden on next, at, &c., at the hour, &c., touching a claim made by you to certain goods and chattels [or *moneys, &c.,* or *for certain rent due on*], seized and taken in execution under process issued out of this Court, in this action; and in default of your then establishing such claim, the said goods and chattels will be sold [or *the said moneys, &c. paid over*] according to the exigency of the said process; and take notice, that you are hereby required, five days before the said day of to deliver to the officer in charge of the said process, or to leave at my office at a particular of the goods or chattels so claimed by you, and of the grounds of your claim [or *of the amount of rent claimed, and for what period due*].

Given under the seal of the Court this day of 18 .

Clerk of the said Court.

To of

22.—*Order on an Interpleader Summons.*

No.

In the County Court of at

(Seal.) Between A. B., Plaintiff,
and
C. D., Defendant.

It is hereby ordered, touching the claim of E. F. to certain goods and chattels [or *moneys, &c.*] seized and taken in execution in this action, which said E. F. has been duly summoned to support his claim at this Court, that the said goods and chattels [or *moneys, &c.,* or *part thereof, to wit,* specifying them] are the property of the said E. F. [or *of the said defendant,* as the case may be]; and it is further ordered, that the costs of this proceeding, amounting to be paid by the said to the Clerk of the Court, at his office in for the use of the said on or before the day of

Given under the seal of the Court this day of 18
By the Court,
Clerk.

Office hours from 10 till 4.

23.—*Judgment against Defendant for Payment of Debt or Damages.**

No.

In the County Court of at

(Seal.)

Between A. B., Plaintiff,
and
C. D., Defendant.

Upon hearing this cause at a Court holden at on the day of it is adjudged, that the said plaintiff do recover against the said defendant the sum of £ for his debt [or *damages by him sustained*], together with the costs of suit, amounting to the sum of £ . And it is ordered that the said defendant do pay the same to the Clerk of the Court at his office in on or before the day of

Given under the seal of the Court this day of , 18 .
By the Court,
Clerk.

Attendance at the office from 10 till 4 o'clock.

24.—*Judgment against Defendant when the Debt or Damages are made payable by Instalments.*

No.

In the County Court of at

(Seal.)

Between A. B., Plaintiff,
and
C. D., Defendant.

Upon the hearing of this cause at a Court holden at on the day of it is adjudged, that the said plaintiff do recover against the said defendant the sum of £ for his debt [or *damages by him sustained*] in a certain action, together with the costs of suit amounting to the sum of £ by instalments, the first instalment to be paid upon the day of . Such payments to be made at the office of the Clerk of this Court, at

* This form may be used in replevin where judgment is given for the plaintiff.

Given under the seal of the Court this day of 18 .

By the Court,

Clerk.

Note.—Office hours from 10 till 4.

25.—*Judgment against Plaintiff for Costs and Satisfaction to Defendant and for his Costs of Suit.*

No.

In the County Court of at

(Seal.) Between A. B., Plaintiff,

and

C. D., Defendant.

At a Court holden at on the day of it was adjudged, that judgment should pass against the said plaintiff, and that the said plaintiff should pay the sum of £ to the said defendant, by way of costs and satisfaction for his trouble and attendance in that behalf, and the further sum of £ for his costs and charges by the said defendant about his suit in that behalf expended, amounting together to the sum of £ on or before the day of . It is therefore ordered, that the said plaintiff do pay the same to the Clerk of the Court, at his office at on or before the day of

Given under the seal of the Court this day of 18 .

By the Court,

Clerk.

Office hours from 10 till 4.

26.—*Execution against the Goods of Defendant.*

No.

In the County Court of at

(Seal.) Between A. B., Plaintiff,

and

C. D., Defendant.

Whereas at a County Court duly holden at on the day of at within the jurisdiction of the said Court, before

the Judge of the said Court, the said plaintiff, by the consideration and judgment of the said Court, recovered against the said defendant the sum of £ for a certain debt before that time due and owing to the said plaintiff [or *for certain damages by him sustained, and by the said Court awarded to be paid to him the said plaintiff*] together with the costs of suit, by the said plaintiff in that behalf expended: and whereas the said defendant, by an order of the said Court, bearing date the day and year aforesaid, was ordered to pay the said debt [or *damages*] together with the said costs, amounting together to the sum of £ [state the times for payment]: and whereas the said sum of £ [or *the sum of £ being part of the said sum of £* as the case may be], has not been paid to the said plaintiff, pursuant to the said order: these are therefore to require and order you forthwith to make and levy by distress and sale of the goods and chattels of the said defendant, wheresoever they may be found within the district of this Court (excepting the wearing apparel and bedding of the said defendant or his family, and the tools and implements of his trade, if any, to the value of five pounds), the said sum of £ and also the costs of this execution; and also to seize and take any money or bank-notes (whether of the Bank of England or of any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money, of the said defendant, which may be there found, or such part or so much thereof as may be sufficient for the satisfying of this execution and the costs of making and executing the same.

Given under the seal of the Court this day of 18

By the Court.

[In cases of cross-judgments the execution must be stated to be for the balance.]

Clerk of the said Court.

To High Bailiff of the said Court,
and other the Bailiffs thereof.

Debt . . . . . . £			
Costs			
Execution			

Notice.—The goods and chattels are not to be sold until after the end of five days next following the day on which they may have been taken, unless they be of a perishable nature, or at the request of the said defendant.

27.—*Execution against the Goods of a Testator.*

No.

In the County Court of at

(Seal.) Between A. B., Plaintiff,

and

C. D., Executor of E. F., deceased, Defendant.

Whereas at a Court duly holden at within the jurisdiction of the said Court, on the day of before the Judge of the said Court, the said plaintiff, by the consideration and judgment of the said Court, recovered against the said defendant, as executor [or *administrator*] of E. F. deceased, the sum of £ for a certain debt before that time due and owing to the said plaintiff by the said E. F. in his lifetime, together with the sum of £ for his costs of suit, by the said plaintiff in that behalf expended: and whereas the said defendant, by an order of the said Court, bearing date the day and year aforesaid, was ordered to pay the said debt [or *damages*] together with the said costs, amounting together to the sum of £ [state the time for payment]: and whereas the said sum of £ has not been paid to the said plaintiff, pursuant to the said order: these are therefore to require and order you forthwith to make and levy by distress and sale of the goods and chattels which were the property of the said E. F. in his lifetime, in the hands of the said defendant to be administered, wheresoever they may be found within the district of this Court, the said sum of £ together with the costs of this execution; and also to seize and take any money or bank-notes (whether of the Bank of England or of any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money, which were the property of the said E. F. in his lifetime, which may there be found, or such part or so much thereof as may be sufficient for the satisfying of this execution and the costs of making and executing the same, if the said defendant hath so much thereof in his hands to be administered: and if he hath not so much thereof in his hands to be administered, then that you make and levy of the proper goods and chattels, money, or bank notes (whether of the Bank of England or any other bank), and any cheques, bills of exchange, promissory notes, bonds,

specialties or securities for money, of the said defendant, the sum of £ for the costs and charges first above mentioned, and the costs of this execution, and of levying the same.

Given under the seal of the Court this day of 18 .

By the Court,

Clerk of the said Court.

To High Bailiff of the said Court,
and the other Bailiffs thereof.

Debt	£			
Costs				
Execution				

Notice.—The goods and chattels are not to be sold until after the end of five days next following the day on which they may have been taken, unless they be of a perishable nature, or at the request of the said defendant.

28.—*Judgment against an Executor on a Devastavit.*

No.

In the County Court of at

(Seal.) Between A. B., Plaintiff,

and

C. D., Executor of E. F., deceased, Defendant.

Upon the hearing of this cause, at a Court holden at on the day of it is adjudged that the said defendant, being the executor of E. F., deceased, hath made away, wasted, and put to his own use, divers goods and chattels, [or *moneys, &c.* as the case may be], which were the property of E. F., deceased, at the time of his death, and which came to the hands of the said defendant as executor as aforesaid, to be administered, whereby a certain judgment recovered by the said plaintiff against the said defendant as executor as aforesaid, at a Court held on the day of remains unsatisfied, and that the said defendant do pay the sum of £ recovered by the said judgment, together with the sum of £ the costs of this suit, to the Clerk of the Court, at his office, on or before, &c. [as the case may be]; and it is further adjudged, that if the said defendant make default in payment thereof, an execution shall issue to make and levy the said several sums of £ and £ of the goods and chattels of the said E. F., if the said

defendant hath so much thereof in his hands to be administered, and if he hath not so much thereof in his hands to be administered, then to be made and levied of the proper goods and chattels of the said defendant.

Given under the seal of the Court this day of 18 .

By the Court.

Note.—The execution upon this order may be drawn from this form.

29.—*Judgment for Defendant in Replevin.**

No.

In the County Court of at

(Seal.)

Between A. B., Plaintiff,
and
C. D., Defendant.

Upon hearing this action of replevin at a Court holden at on the day of it is adjudged that the said plaintiff do return to the said defendant the cattle [or *the goods or chattels*, as the case may be, stating the particulars thereof] forthwith [or as the case may be]; and that the said defendant do recover against the said plaintiff the costs of suit, amounting to the sum of £ ; and it is further ordered, that the said defendant do pay the same to the Clerk of the Court at his office at on or before the day of

Given under the seal of the Court this day of 18 .

By the Court,
Clerk.

Office hours from 10 till 4.

30.—*Judgment for Recovery of Tenement.*

No.

In the County Court of at

(Seal.)

Between A. B., Plaintiff,
and
C. D., Defendant.

Upon the hearing of this cause at a Court holden at on the day of it is adjudged, that the said plaintiff do recover against the said defendant, possession of a certain house [or *land* or

* Judgment for the plaintiff in Form No. 23.

part of a certain house] at together with the costs of suit, amounting to the sum of £ and it is ordered that the said defendant do forthwith quit and deliver up possession of the said house [or *&c.*] to the said plaintiff; and that a warrant do forthwith issue, to enforce this adjudication, and to require and authorize the Bailiff of the said Court to give possession of the said house [or, *&c.*] to the said plaintiff, within days from the date of such warrant; and it is further ordered, that the said defendant do pay the said sum of £ for the said plaintiff's costs, to the Clerk of this Court, at his office in on or before the day of

Given under the seal of the Court this day of 18 .

By the Court,

Clerk.

Office hours from 10 till 4.

Note.—The warrant for the execution of this order may be drawn from this form.

31.—*Execution against the Goods of Plaintiff.*

No.

In the County Court of at

(Seal.)

Between A. B., Plaintiff,
and
C. D., Defendant.

Whereas at a County Court duly holden at within the jurisdiction of the said Court, on the day of before the Judge of the said Court, the said plaintiff appeared [or *did not appear*] to prosecute his plaint against the said defendant in an action of debt [or *to recover damages*] for [set out the substance of the plaint]; and whereas the said plaintiff, at the hearing of the said plaint, did not make proof of his debt [or *demand*] to the satisfaction of the said Court, and thereupon it was ordered and adjudged by the said Court that judgment should be entered for the said defendant, and that the said plaintiff should pay to the said defendant the sum of £ by way of costs and satisfaction for his trouble and attendance in that behalf, and the further sum of £ for his costs and charges by the said defendant about the said suit in that behalf expended, amounting together to the sum of £ on or before the day of : and whereas the said sum of £ has not been paid to the said defendant, pursuant to the said judgment and

order: these are therefore to require and order you forthwith to make and levy by distress and sale of the goods and chattels of the said plaintiff, wheresoever they may be found within the district of this Court (excepting the wearing apparel and bedding of the said plaintiff or his family, and the tools and implements of his trade, if any, to the value of five pounds), the said sum of £ and also the costs of this execution; and also to seize and take any money or bank notes (whether of the Bank of England or of any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money, of the said plaintiff, which may there be found, or such part or so much thereof as may be sufficient for the satisfying of this execution, and the costs of making and executing the same.

Given under the seal of the Court this day of 18 .

By the Court,

Clerk of the said Court.

To High Bailiff of the said Court,
and the other Bailiffs thereof.

	£		
Costs			
Execution			

Notice.—The goods and chattels are not to be sold until after the end of five days next following the day on which they may have been taken, unless they be of a perishable nature, or at the request of the said defendant.

32.—*Summons to Defendant after Judgment.*

No.

In the County Court of at

(Seal) Between A. B., Plaintiff,
and
C. D., Defendant.

Whereas at a County Court held at, &c., on, &c., the above-named plaintiff obtained a judgment [or *order*] against you for payment of for which said judgment [or *order*] still remains unsatisfied, you are therefore hereby summoned to appear at the County Court to be holden at, &c., on, &c., at the hour, &c., to be then and there examined by the Judge of the said Court, touching your estate and effects, and the manner

and circumstances under which you contracted the said debt [or *incurred the damages* or *liability*] which was the subject of the action in which the said judgment was obtained against you, and as to the means and expectation you then had, and as to the property and means you still have of discharging the said debt [or *damages* or *liability*], and as to the disposal you may have made of any property. And take notice, that if you do not appear in obedience to this summons, you may, by order of this Court, be committed to the common gaol [or other prison of the Court].

Given under the seal of the Court this day of 18 .

By the Court,

Clerk.

Amount of judgment or order	£			
Costs of this summons				

33.—*Warrant of Commitment in Default of Appearance.*

No.

In the County Court of at

Between A. B., Plaintiff,

and

C. D., Defendant.

To the High Bailiff and the other Bailiffs of the said Court, and all Constables and Peace Officers within the jurisdiction of the said Court, and to the Governor or Keeper of

Whereas at a County Court duly holden at on the day of in the year of our Lord 18 , the above-named plaintiff, by the judgment of the said Court, in a certain suit wherein the said Court had jurisdiction, recovered against the above-named defendant the sum of £ for his debt [or *damages*, as the case may be], together with the sum of £ the costs of the said suit, and thereupon it was then and there ordered by the said Court, that the said defendant should pay to the said plaintiff the said sums of £ and £ so recovered against the said defendant as aforesaid, on or before the day of, &c. [as the case may be]: and whereas the said defendant not having paid the said sums of £ and £ pursuant to the said order, upon the application of the said plaintiff, a summons was duly issued from and out of the said Court against the said defendant, by which said summons the said defendant was required to appear at the County Court

of at on the day of, &c., to answer such questions as might be put to him touching [set out as in the summons]: and whereas it was duly proved upon oath at the said last-mentioned Court, that the said defendant was personally served with the said summons: and whereas the said defendant did not attend as required by such summons or allege any sufficient excuse for not so attending, and thereupon it was ordered by the Judge of the said Court, that the said defendant should be committed for the term of days to the in the according to the form of the statute in that case made and provided, or until he should be discharged by due course of law: these are therefore to require you, the said High Bailiff, Bailiffs, and others, to take the said defendant and to deliver him to the governor, &c. [or *keeper, &c.*]; and you the said governor [or *keeper, &c.*] are hereby required to receive the said defendant, and him safely to keep in the for the term of days, from the arrest under this warrant, or until he shall be sooner discharged by due course of law. For which this shall be your sufficient warrant.

Given under the seal of the Court this day of 18 .

Clerk of the said Court.

34.—*Warrant of Commitment after Examination.*

No.

In the County Court of at

Between A. B., Plaintiff,
and
C. D., Defendant.

To the High Bailiff and the other Bailiffs of the said Court, and all Constables and Peace Officers within the jurisdiction of the said Court, and to the Governor or Keeper of

Whereas at a County Court duly holden at on the day of in the year of our Lord 18 , the above-named plaintiff, by the judgment of the said Court, in a certain suit wherein the said Court had jurisdiction, recovered against the above-named defendant the sum of £ for his debt [or *damages*, as the case may be], together with the sum of £ the costs of the said suit; and thereupon it was then and there ordered by the said Court, that the said defendant should pay to the said plaintiff the sums of £ and £ so recovered against the said defendant as aforesaid, on or before the

day of, &c. [as the case may be]: and whereas the said defendant not having paid the said sums of £ and £ pursuant to the said order, upon the application of the said plaintiff, a summons was duly issued from and out of the said Court against the said defendant, by which said summons the said defendant was required to appear at the said County Court of at on the day of, &c., to answer such questions as might be put to him touching [set out as in the summons]: and whereas the defendant having duly appeared at the said Court, pursuant to the said summons, was examined touching, &c. [as in the summons]: and whereas it appeared upon such examination to the satisfaction of the Judge of the said Court, that [here insert the particular ground of commitment], and thereupon it was ordered by the said Judge, that the said defendant should be committed for the term of days to the in the according to the form of the statute in that case made and provided, or until he should be discharged by due course of law: these are therefore to require you, the said High Bailiff, Bailiffs, and others, to take the said defendant, and to deliver him to the governor, &c. [or *keeper, &c.*]; and you the said governor, &c. [or *keeper, &c.*] are hereby required to receive the said defendant, and him safely to keep in the for the term of days, from the arrest under this warrant, or until he shall be sooner discharged by due course of law. For which this shall be your sufficient warrant.

Given under the seal of the Court this day of 18 .

(Seal.) Clerk of the said Court.

35.—*Warrant of Commitment where Defendant appears and is examined at the time of hearing.*

No.

In the County Court of at

Between A. B., Plaintiff,
and
C. D., Defendant.

To the High Bailiff and the other Bailiffs of the said Court, and all Constables and Peace Officers within the jurisdiction of the said Court, and to the Governor or Keeper of the Gaol at

Whereas at a Court now holden at on this day of in the year of our Lord 18 , the above-named plaintiff, by the judgment of the said Court, in a certain suit wherein the said Court had jurisdiction, recovered against the above-named defendant the sum of £ for his

debt [or *damages*], together with the sum of £ the costs of the said suit; and thereupon it was then and there ordered by the said Court, that the said defendant should forthwith pay to the said plaintiff the said sums of £ and £ so recovered against the said defendant: and whereas, the said defendant having personally appeared to the said summons, and being present in Court, was, upon the application of the said plaintiff, then and there examined touching [set out as in the summons]: and whereas it appeared upon such examination, to the satisfaction of the Judge of the said Court, that [here insert the particular ground of commitment]: and thereupon the said Judge of the said Court, by a certain order bearing date the day of did order and adjudge the said defendant to be committed for the term of days to the in the or until he should be discharged by due course of law: these are therefore to require you the said High Bailiff, Bailiffs, and others, to take the said defendant, and to deliver him to the governor, &c. [or *keeper, &c.*]; and you the said governor [or *keeper, &c.*] are hereby required to receive the said defendant, and him safely to keep in the &c. for the term of days, from the arrest under this warrant, or until he shall be sooner discharged by due course of law. For which this shall be your sufficient warrant.

Given under the seal of the Court this day of 18 .

(Seal.) Clerk of the said Court.

36.—*Certificate for the Discharge of a Defendant from Custody.*

No.

In the County Court of at

(Seal.) Between A. B., Plaintiff,
and
C. D., Defendant.

I do hereby certify that the above-named defendant, who was committed to your custody under and by virtue of a certain warrant of commitment under my hand and the seal of the said Court, and bearing date the day of for the space of days, has, since the issuing of the said warrant of commitment, to wit, on the day of current [or *last past*] paid and satisfied the debt [or *damages*, or *the instalments of the said debt* or *damages*], for the non-payment whereof he was so committed as aforesaid, together with all fees, costs, and charges due and payable by him in respect thereof; and that the said defendant may in

respect of such warrant of commitment be forthwith discharged from and out of your custody.

By leave of the Judge of the said Court,

Clerk of the said Court at

Given under the seal of the said Court this day of 18 .

To the Governor or Keeper of the gaol at .

37.—*Allowance to Witnesses*

	s.	d.
Gentlemen, merchants, bankers, and professional men . . .	7	6
Tradesmen, auctioneers, accountants, clerks, and yeomen . .	5	0
Journeymen, labourers, and the like	2	0
Travelling expenses per mile, one way	0	6

38.—*Return by the High Bailiff* (see p. 123).

FRED. POLLOCK.
WM. WIGHTMAN.
C. CRESSWELL.
W. ERLE.
E. V. WILLIAMS.

INSTRUCTIONS

ISSUED BY THE LORDS COMMISSIONERS OF HER MAJESTY'S TREASURY TO THE TREASURERS OF COUNTY COURTS, UNDER THE ACT OF THE 9 & 10 VICT. C. 95.

1. The Treasurer will require the Clerk of every Court to transmit to him immediately after the termination of each month, an account showing the amount of fees received under the authority of the Act, during the month, distinguishing the Judge's fees, the Clerk's fees, the High Bailiff's fees, and the General Fund fees, together with an account of all fines levied during the month, and the expenses of levying the same. And likewise an account of the Suitors' money, and the balance remaining in the hands of the Clerk at the termination of the said month; such accounts to be made out according to the Form marked A. And the Clerk of every Court is, at the same time, to pay over to the Treasurer the amount of the Judge's fees, and of the General Fund fees, and also such portion of the Suitors' Fund then in his hands as the Treasurer shall require.

2. The Treasurer will audit the accounts of the Clerk quarterly, namely, immediately after the 31st March, the 30th June, the 30th September, and the 31st December, in each year, or oftener in the large court towns, if he shall deem it necessary. And at the termination of such audit the Treasurer shall receive from the Clerk the balance of the Suitors' money, and all other moneys remaining in his hands, except his (the Clerk's) own fees. And the Treasurer will not remove the books of the Clerk from the court town, so as to create any delay or inconvenience to the business of the Court.

3. The Treasurer, in auditing the Clerk's accounts, will duly examine the various books kept by the Clerk, so as to satisfy himself of the correctness of the accounts by comparing the entries in the several books to such an extent as he may consider necessary for that purpose.

4. The Treasurer will, immediately after the quarterly audit, pay over to the Judge the full amount of his fees; or, if the Judge should require it, the Treasurer may, from time to time between the quarterly audits, pay to him a portion of his fees, and the balance at the termination of each audit. The Treasurer will also pay over to the High Bailiff, in the same manner, such fees as may be due to the latter upon warrants of execution duly returned and completed.

5. And to enable the Treasurer to examine the accounts with greater facility, he will require the Clerk at each court town to pursue the following course, in his several books, namely :—

Execution Book.—Each page to be separately added up, and a summary of the same made at the end of each month, showing the amount of the Clerk's fees, and Bailiff's fees.

Cash Book.—The debit and credit side of each page to be added up, and carried forward from page to page to the end of each month, showing the amount of Suitors' cash paid in and paid out, together with the amount of fees for paying in and out, for searches, and for certificates.

Fee Book.—Each page to be added up, showing the number of plaints, the total of the Judge's fees, of the Clerk's fees, of the Bailiff's fees, and of the General Fund fees, and likewise the total of the whole of the fees. The totals of each of the fees must not be carried on from page to page, but a summary of such totals must be made at the termination of each Court, on a vacant space in the book next following the last entries.

6. The Treasurer will, at the time of the audit, allow in the Clerk's accounts, out of the General Fund account, all such disbursements as shall have been made or incurred for servants, repairs of court and offices, books, stationery, and all other necessary expenses, provided the same shall have been sanctioned in the manner required by the 55th section of the Act, and proper vouchers are produced.

7. The Treasurer will obtain from the Clerk, once in every year, and the Clerk is hereby required to furnish the same, a balance sheet of the Clerk's ledger, made out according to the Form marked B; and the Treasurer will afterwards check the balance sheet in such way as he may deem necessary, so as to satisfy himself that the receipts have been duly entered and accounted for in the cash book, and posted in the ledger; but this duty need not be performed by the Treasurer at any specified period of the year,

or simultaneously in all the courts, but may be done at any convenient time, so that the duty is performed at least once in every year.

8. The Treasurer will, from time to time, pay the moneys coming to his hands into such bank for security as he may think most desirable, taking care to keep the account of the same entirely separate and distinct from his private, or any other account, at such bankers.

9. The Treasurer will, within six weeks after the completion of each quarterly audit of the Clerk's accounts, transmit to Mr. Richard Hankins, at the Treasury Chambers, Whitehall, a general abstract of the accounts of each Court, showing the total amount of the fees received and appropriated during the quarter for the Judge, the Clerk, and the High Bailiff, and the amount of the General Fund account, and Suitors' Fund account, and Fines, so that the unappropriated balance remaining in the hands of the Treasurer at the termination of each quarter may be ascertained in order that the Lords Commissioners of Her Majesty's Treasury may, if they shall think proper, direct any part of such unappropriated balance to be paid over to the credit of the Consolidated Fund; and the said general abstract is to be made out according to the Form marked C.

10. The attention of the Treasurer is particularly directed to the 51st, 53rd, and 54th sections of the Act of Parliament, and he will govern himself in conformity to the provisions thereof; taking care to obtain the authority and sanction of the Lords Commissioners of Her Majesty's Treasury, or of Her Majesty's principal Secretary of State for the Home Department, in all cases where he is required so to do, or where he may think it necessary to consult their Lordships or the Secretary of State before he takes any measures for complying with the directions of the Legislature.

11. The Treasurer will take care not to incur any considerable expenses for providing or renting Court-houses and offices under the 48th section of the Act (further than he has already done under the recent instructions of the Lords Commissioners of Her Majesty's Treasury), without the approval of Her Majesty's Secretary of State for the Home Department, or their Lordships.

12. Whenever the Treasurer requires any general information for his guidance, he will communicate with Mr. Hankins at the Treasury, who will afford every assistance in his power upon any matter brought under his notice. But on all subjects of importance connected with the duties of the Treasurer involving any considerable outlay of money, or other

financial operations, the Treasurer should communicate directly with the Lords Commissioners of the Treasury.

13. The notice of the Treasurer is particularly directed to the provisions of the 28th, 29th, and 30th sections of the Act, to which he should implicitly attend.

14. Should any of the Clerks neglect or refuse to comply with the directions of the Treasurer in regard to any of these instructions, it will be the duty of the Treasurer immediately to report the same to the Lords Commissioners of Her Majesty's Treasury.

15. The Treasurer will take care that in any communications which he may have to make either to the Lords Commissioners of Her Majesty's Treasury, or to Her Majesty's Secretary of State for the Home Department, to write separate and distinct letters upon every different subject; and he will enter all such communications and any other official correspondence in a letter-book to be kept for that purpose, with proper Index.

16. The Treasurer is to keep a cash book, in which every receipt and expenditure is to be entered daily, and as each transaction occurs, in order that at any moment the actual cash balance in hand may be ascertained; and also a ledger, showing the state of the accounts of each Court town, according to the forms D. E.

17. The Treasurer, in making all payments and disbursements, should require receipts; and where the sum amounts to £5 and upwards, such receipt should be written on properly stamped paper; except in the payment of the Judge's fees and Suitors' money paid to the Clerks, for which the written acknowledgment of the Judge and Clerk respectively on unstamped paper will be a sufficient voucher; and in cases where the party is unable to write, his mark will require a competent witness.

18. In cases where the payment is not made to the party apparently entitled, a power of attorney or other legal document authorizing the payment in question should be furnished.

19. It will be seen by reference to the 43rd section of the Act, that the Treasurer of every County Court is to render once a year, or oftener if required, to the Commissioners for Auditing the Public Accounts of Great Britain, a true account in writing of all moneys received and of all moneys disbursed by him on account of every Court of which he is Treasurer, in such form and with such particulars of receipt and disbursement as the Audit Board shall from time to time require.

The Lords Commissioners of Her Majesty's Treasury deem it requisite that each Treasurer shall render his account to the Audit Board half-

yearly: namely, from the 1st January to the 30th June, both days inclusive; and from the 1st July to the 31st December, both days inclusive, such accounts to be rendered within two calendar months after the expiration of each half-year: the first account, however, is to be rendered on or before the 30th September, 1847, to include the period from the commencement of the business of each Court to the 30th June, 1847.

20. The Treasurer will accordingly transmit to the Commissioners of Audit within two calendar months after the termination of each half-year, as before mentioned, an account current in the Form marked F.

21. The account current is to be supported by abstracts of receipts and payments, the abstracts being copies of the debit and credit side of the cash book (according to the Forms marked G and H), and the said abstracts are to be supported by proper authorities, vouchers, and bills of particulars, which documents are to be transmitted in original to the Audit Office.

22. The documents (if any) delivered in support of the sums received and brought to account should be endorsed by letters of the alphabet commencing with the letter A, and corresponding with the entry in the abstracts —and the vouchers for payment should be numbered consecutively commencing with No. 1.

23. The accounts in pursuance of the 9th section of the 46 Geo. 3, c. 141, should be declared to, either before a Baron of the Court of Exchequer, a Commissioner for taking Affidavits in the Court of Exchequer, or before one of the Commissioners of Audit; the declaration to be according to the Form appended to the account current marked F.

Treasury Chambers, June, 1847.

THE

COUNTY COURT EXTENSION ACT.

13 & 14 Vict. cap. 61.

An Act to extend the Act for the more easy Recovery of Small Debts and Demands in England, and to amend the same.—[14th August, 1850.]

1. Whereas by an act passed in the tenth year of the reign of Her present Majesty, intituled *An Act for the more easy Recovery of Small Debts and Demands in England*, jurisdiction is given to the courts holden under the said act for the recovery of certain debts, damages, and demands therein mentioned not exceeding twenty pounds: and whereas it is expedient to extend the provisions of the said act, and also of a certain other act passed in the thirteenth year of the reign of Her said Majesty, intituled *An Act to amend the Act for the more easy Recovery of Small Debts and Demands in England, and to abolish certain Inferior Courts of Record*, to debts, damages, and demands not exceeding the sum of fifty pounds, and to alter and amend the said first-mentioned act in manner hereinafter mentioned: be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords spiritual

9 & 10 Vict. c. 95.

12 & 13 Vict. c. 101.

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and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that the jurisdiction of the several courts holden or to be holden under the said act of the tenth year of Her Majesty shall extend to the recovery of any debt, damage, or demand not exceeding the sum of fifty pounds, and to all actions in respect thereof (save and except the several actions specified in the proviso in section fifty-eight of the same act),[1]; and that the several powers and provisions of the said several acts of the tenth and thirteenth years of Her Majesty, and all rules, orders, and regulations which have been or may be made in pursuance of the said acts or either of them, shall extend to all debts, damages, and demands which may be sued for in the said courts or any of them not exceeding the sum of fifty pounds, and to all proceedings and judgments for the recovery of the same, or otherwise in relation thereto respectively, as fully and effectually, to all intents and purposes, as the same respectively are now or may be applicable to debts, damages, and demands within the present jurisdiction of the said courts.

Extension of Jurisdiction.

2. And be it enacted, that this act and the

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[1] The jurisdiction is thus extended to 50*l.* for all causes of action except such as were expressly excluded by section 58 of the 9 & 10 Vict. c. 95, that is to say:—"Any action of ejectment, or in which the title to any corporeal or incorporeal hereditaments, or to any toll, fair, market, or franchise, shall be in question, or in which the validity of any devise, bequest, or limitation under any will or settlement may be disputed, or for any malicious prosecution, or for any libel or slander, or for criminal conversation, or for seduction; or breach of promise of marriage."

But by a subsequent section (s. 17), parties may, by *consent*, try any of such demands to an unlimited amount, and also such as involve title.

This act to be construed with 9 & 10 Vict. c. 95, and 12 & 13 Vict. c. 101.

said recited acts of the tenth and thirteenth years of Her Majesty shall be read and construed as one act, as if the several provisions in the said recited acts contained, not inconsistent with the provisions of this act, were repeated and re-enacted in this act.

Deputy judge not to practise in district whilst he acts as deputy.

Clerks, &c. to reside in district.

3. And be it enacted, that no deputy judge of any such County Court, save and except the Westminster County Court of Middlesex, shall, during the time he acts or shall be entitled to act as such deputy, practise as a barrister in any court within the district for which he acts or shall be entitled to act as such deputy;[2] and that every clerk and assistant clerk appointed after the passing of this act to any of such courts shall reside within the district of the court or courts for which he shall have been appointed.[3]

Power to remove clerks, high bailiffs, or assistant clerks.

4. And be it enacted, that so much of the said act of the tenth year of Her Majesty as relates to the removal of clerks or high bailiffs of the courts holden under the said act shall be repealed; and it shall be lawful for the Lord Chancellor, or, where the whole of the district of the court or courts for which the clerk or high bailiff shall have been appointed is within the Duchy of Lancaster, for the chancellor of the Duchy of Lancaster, when such Lord Chancellor or Chancellor

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[2] The court must be within the district, and the prohibition extends only to the period over which the appointment extends. It may therefore be readily evaded by making the appointment for a limited time, as for the day on which the court is to be held. The section does not meet the objection it was designed to remedy.

[3] It will be observed that this applies only to clerks *hereafter* appointed.

of the Duchy shall in his discretion think fit, to remove the clerk, high bailiff, or any assistant clerk of any such court or courts from his office, and from time to time to make such order as to the attendance of any clerk, deputy clerk, or assistant clerk, during the sitting of the court or otherwise, as he shall think fit:[4] provided always, that nothing herein contained shall affect the tenure of office of any person who before the passing of the said act held an office in any of the courts mentioned in the schedule (A.) annexed to the said act.

Fees to be taken according to schedule.

5. And be it enacted, that there shall be payable on every proceeding in the courts holden under the said act of the tenth year of Her Majesty, to the judges, clerks, and high bailiffs of the several courts, in every case where the sum sought to be recovered shall exceed twenty pounds, such fees as are set down in the schedule marked D. to the said act of the tenth year of Her Majesty annexed as fees payable upon demands exceeding the sum of ten pounds;[5] and the fees on every proceeding shall be paid in the first instance by the plaintiff or party on whose behalf such proceeding is to be had on or before

[4] The probable intention of this section is to remove a difficulty occasioned by the recent decision in the case of *Reg.* v. *Owen* (15 L. T. 226), the effect of which was that a clerk could not be removed because he was in pecuniary difficulties. This section gives to the Lord Chancellor the power of removing officers *at his discretion*, so that such offices are not now held during good behaviour.

[5] The *court fees* to be paid in cases under the new jurisdiction, are to be the same as in the table allowed in demands above 10*l*. under the former jurisdiction: but the Treasury may increase, lessen or vary them.

such proceeding, and in default payment thereof shall be enforced by order of the judge by such ways and means as any debt or damage ordered to be paid by the court can be recovered; and the fees upon executions shall be paid into court at the time of the issue of the warrant of execution, and shall be paid by the clerk of the court to the bailiff upon the return of the warrant of execution, and not before: provided always, that it shall be lawful for one of Her Majesty's principal Secretaries of State, with the consent of the commissioners of Her Majesty's treasury, from time to time to regulate or vary, lessen or increase, the fees payable under this act or the said recited acts, or either of them, in such manner as to him shall seem fit: provided also, that all sums payable in the name of fees to such officers of the court as shall be paid by salaries shall be paid from time to time to the treasurer of the court, and shall be applied by such treasurer in the manner provided by the said act of the tenth year of Her Majesty.

Power to Secretary of State, with consent of the Treasury, to alter fees.

6. And be it enacted, that the fees to be taken by barristers-at-law and attorneys practising in the said courts, in cases brought within the jurisdiction given by this act, shall be as follows: an attorney shall be entitled to have or recover a sum not exceeding one pound ten shillings for his fees and costs, where the debt, damage, or demand claimed in any plaint in covenant, debt, detinue, or assumpsit shall not exceed thirty-five pounds, or two pounds in any other case, within the jurisdiction given by this act; and in no case shall any fee exceeding two pounds four shillings and sixpence be allowed for employing a barrister as counsel in the cause; and the expense of employing a barrister or an attorney, either by plaintiff or defendant, shall not be allowed on taxation of costs, unless

Fees to be taken by barristers and attorneys.

by order of the judge; and the judges of the said courts respectively shall from time to time determine in what cases such expenses shall be so allowed.[6]

Power of paying judges, clerks, and high bailiffs by salary instead of fees given to the Lords of the Treasury and the Secretary of State.

7. And be it enacted, that so much of the said act of the tenth year of Her Majesty as enacts that it shall be lawful for Her Majesty, with the advice of Her Privy Council, to order that the judges, clerks, bailiffs, and officers of the courts holden under that act, or any of them, shall be paid by salaries instead of fees, or in any manner other than is provided by that act, shall be repealed; and that it shall be lawful for the commissioners of Her Majesty's treasury, with the consent of one of Her Majesty's principal Secretaries of State, from time to time to order that the judges, clerks, bailiffs, and officers of the said courts, or any of them, shall be paid by salaries

[6] The following is, therefore, the scale of fees now allowed to counsel and attorneys:—

IN COVENANT, ASSUMPSIT AND DEBT.

	Counsel.			Attorney.		
	£	s.	d.	£	s.	d.
Under 2*l.*	0	0	0	0	0	0
Above 2 and not exceeding 5*l.*	1	3	6	0	10	0
,, 5 ,, ,, 20	1	3	6	0	15	0
,, 20 ,, ,, 35	2	4	6	1	10	0
,, 35 ,, ,, 50	2	4	6	2	0	0

IN TRESPASS, OR TRESPASS ON THE CASE.

	Counsel.			Attorney.		
	£	s.	d.	£	s.	d.
Under 2*l.*	0	0	0	0	0	0
Above 2 and not exceeding 5*l.*	1	3	6	0	10	0
,, 5 ,, ,, 20	1	3	6	0	15	0
,, 20 ,, ,, 50	2	4	6	2	0	0

instead of fees, or in any manner other than is provided by the said act.[7]

8. And be it enacted, that any person against whom a plaint shall be entered in any County Court may, if he think fit, whether he be summoned upon such plaint or not, in the presence of the clerk or assistant-clerk of the court in which such plaint shall have been entered, or one of their clerks respectively, or in the presence of an attorney of one of the Superior Courts, sign a statement confessing and admitting the amount of the debt or demand or part of the amount of the debt or demand for which such plaint shall have been entered,[8] and such clerk or assistant clerk shall, as soon as conveniently may be after receiving such statement, send notice thereof to the plaintiff, by the post or by causing the same to be delivered at his usual place of

Confession of debts or parts of debts, &c., and judgment thereupon.

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[7] Thus this act really places the entire regulation of the County Courts in the hands of the Treasury.

[8] This is a proceeding analogous to a *cognovit* in the Superior Courts, the name to be given to it may be "a confession of debt." It may be in the following form:—

In the County Court of , *at* .

Between { A. B., *Plaintiff*, *and* C. D., *Defendant*. }

I, C. D., *the above-named defendant, do hereby confess and admit the debt* [or *demand*, as the case may be] *in this action to the amount of £* .

(*Signed*) C. D., *Defendant*.

Signed by the said C. D. *on this* *day of* *in the presence of* E. F. *Clerk of the County Court of* , [or, *an attorney of the Court of Queen's Bench at Westminster*.]

Witness, E. F.

abode or business,[9] and thereupon it shall not be necessary for the said plaintiff to prove the debt or demand so confessed and admitted as aforesaid, but the judge of such court, at the next sitting of such court, whether the parties or either of them attend such court or not, shall, upon proof by affidavit of the signature of the party, if such statement were not made in the presence of the clerk or assistant clerk,[10] proceed

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[9] The form of this NOTICE may be as follows:—

In the County Court of , at .

No.

Between A. B., *Plaintiff, and* C. D., *Defendant.*

Sir,—I hereby give you notice that I have received from the above-named defendant a statement, whereby he confesses and admits the debt [or *demand*] *in this suit to the amount of £ .*

And, take notice, that it will not be necessary for you to prove the said demand so confessed and admitted as aforesaid, but the judge of the said court will, at the next sitting thereof, whether you shall appear or not, upon due proof of the signature of the defendant, proceed to give judgment for the demand so confessed and admitted.

Yours, &c.,

E. F., *Clerk.*

To , the above-named Plaintiff.

Dated

[10] The form of AFFIDAVIT may be as follows.—

In the County Court of , at .

No.

Between A. B., *Plaintiff, and* C. D., *Defendant.*

E. F., *of , in the county of , gentleman, maketh oath and saith that the signature , to the statement of confession of debt hereunto annexed, is the proper handwriting of* C. D., *the above-named defendant*

to give judgment for the debt or demand so confessed and admitted, in the same manner, and subject to the same conditions, as if he had tried the cause, and given judgment thereupon, under the provisions of the said first-recited act.

Agreement as to the amount of debt, &c., and conditions of payment.

9. And be it enacted, that if the person against whom a plaint shall be entered in any County Court can agree with the person on whose behalf such plaint shall have been entered upon the amount of the debt or demand in respect of which such plaint shall have been entered, and upon the terms and conditions upon which the same shall be paid or satisfied, it shall be lawful for such persons respectively, in the presence of the clerk or assistant clerk of the court in which such plaint shall have been entered, or one of their clerks respectively, or in the presence of an attorney of one of the Superior Courts, to sign a statement of the amount of the debt or demand so agreed upon between such persons respectively, and of the terms and conditions upon which the same shall be paid or satisfied,[11] such clerk or assistant clerk shall receive such statement, and shall thereupon, upon proof by affidavit of the signature of the party, if such

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and that the same was made in the presence of this deponent.

Sworn at , *in the county of* , *this* *day of* , 1850, *before me,*

————.

[11] The form of STATEMENT may be as follows:—

In the County Court of , *at* ,

No. *Between* { A. B., *Plaintiff*, *and* C. D., *Defendant*.

It is this day stated and agreed between the plaintiff and the defendant in this suit that the amount of the [*debt* or *demand*] *due to the said plaintiff is* £ , *and that the terms and conditions on which the said sum of* £

statement were not made in the presence of the clerk or assistant clerk,[12] enter up judgment for the plaintiff for the amount of the debt or demand so agreed on, and upon the terms and conditions mentioned in such statement; and such judgment shall to all intents and purposes be the same, and have the same effect, and shall be enforced and enforceable in the same manner, as if it had been a judgment of the judge of the said court.

If plaintiff or his attorney do not appear on day of hearing, costs may be awarded to defendant for his trouble and attendance.

10. And be it enacted, that in every case where the plaintiff shall not appear, either by himself or his attorney, upon the day of the return of any summons for hearing, or at any continuation or adjournment of the said hearing, and the defendant shall appear either by himself or his attorney upon such day of hearing, continuation, or adjournment, it shall be lawful for the judge to award to the defendant or to his attorney, by way of costs of his attendance and satisfaction for his trouble[13] such sum as the

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is to be paid are as follows:—[Here insert terms and conditions.] *Witness the hands of the parties this* *day of* 18 .

(*Signed*)

A. B., *Plaintiff.*
C. D., *Defendant.*

Signed by the said *and* *, on this* *day of* *, in the presence of E. F., Clerk of the County Court of* , [or, *an attorney of the court, &c.* as the case may be.]

Witness, E. F.

[12] The affidavit may be in the same form as given in note [10].

[13] This would appear to be an unlimited discretion, and such costs might exceed those allowed by the act to counsel and

judge in his discretion shall think fit; and the sum so awarded shall be recoverable from the plaintiff by such ways and means as any debt or damage ordered to be paid by the same court can be recovered.

Plaintiffs recovering in the Superior Courts sums not exceeding 20*l.* in actions of contract, or 5*l.* in actions of tort, over which the County Court has jurisdiction, to have no costs.

11. And be it enacted, that if in any action commenced after the passing of this act in any of Her Majesty's Superior Courts of Record, in covenant, debt, detinue, or assumpsit, not being an action for breach of promise of marriage, the plaintiff shall recover a sum not exceeding twenty pounds, or if, in any action commenced after the passing of this act in any of Her Majesty's Superior Courts of Record, in trespass, trover, or case, not being an action for malicious prosecution, or for libel, or for slander, or for criminal conversation, or for seduction, the plaintiff shall recover a sum not exceeding five pounds,[14] the plaintiff shall have judgment to recover such sum only, and no costs, except in the cases hereinafter provided, and except in the case of a judgment by default;[15] and it shall not be necessary to enter any suggestion on the record to deprive such plaintiff of costs,[16] nor shall any such plaintiff be entitled to costs by reason of any privilege as attorney or officer of such court or otherwise.

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attorneys. It was no doubt intended only to secure defendants against being put to needless trouble by litigious plaintiffs.

[14] The practical effect of this is to give to the superior courts a concurrent jurisdiction above 20*l.* in actions *ex contractu*, and above 5*l.* in actions *ex delicto*.

[15] This is a disadvantageous provision, for it compels a defendant in the superior court to defend an action in order to deprive a plaintiff of costs. If he allows judgment to go by default he cannot do so.

[16] Henceforth there will be no necessity to enter a suggestion for the purpose of depriving plaintiff of costs.

Judge at the trial may certify, to entitle the plaintiff to costs.

12. Provided always, and be it enacted, that if the plaintiff shall in any such action as aforesaid recover a sum less than the sum in that behalf hereinbefore mentioned, by verdict, and the judge or other presiding officer before whom such verdict shall be obtained shall certify on the back of the record that it appeared to him at the trial that the cause of action was one for which a plaint could not have been entered in any such County Court as aforesaid, or that it appeared to him at the trial that there was a sufficient reason for bringing the said action in the court in which the said action was brought, the plaintiff in such case shall have the same judgment to recover his costs that he would have had if this act had not been passed.

If the court, or a judge at chambers, make an order, the plaintiff to have costs.

13. Provided also, and be it enacted, that if in any such action, whether there be a verdict in such action or not, the plaintiff shall make it appear to the satisfaction of the court in which such action was brought, or to the satisfaction of a judge at chambers upon summons, that the said action was brought for a cause in which concurrent jurisdiction is given to the Superior Courts by the hundred and twenty-eighth section of the said recited act of the tenth year of Her Majesty,[17] or for which no plaint could have been entered in any such County Court, or that the said cause was removed from a County Court by *certiorari*,[18]

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[17] Where the plaintiff dwells more than twenty miles from the defendant, or the cause of action did not arise wholly or in some material point within the jurisdiction of the court within which the defendant dwells or carries on his business at the time of the action brought, or where any officer of the county court shall be a party, except in respect of any claim to any goods and chattels taken in execution of the process of the courts, or the proceeds or value thereof.

[18] Section 16, it will be observed, abolishes *certiorari*, so that this provision is useless.

then and in any of such cases the court in which the said action is brought, or the said judge at chambers, may thereupon, by rule or order, direct that the plaintiff shall recover his costs, and thereupon the plaintiff shall have the same judgment to recover his costs that he would have had if this act had not been passed.

Parties aggrieved may appeal.

14. And be it enacted, that if either party in any cause of the amount to which jurisdiction is given to the County Court by this act shall be dissatisfied with the determination or direction of the said court in point of law, or upon the admission or rejection of any evidence, such party may appeal from the same to any of the Superior Courts of Common Law at Westminster, two or more of the puisne judges whereof shall sit out of term as a court of appeal for that purpose; provided that such party shall, within ten days after such determination or direction, give notice of such appeal[19] to the other party or his attorney, and also give security, to be approved by the clerk of the court, for the costs of the appeal, whatever be the event of the appeal, and for the amount of the judgment, if he be the defendant, and the appeal be dismissed; provided neverthe-

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[19] The notice of APPEAL may be as follows:—

In the County Court of A., *at* B.

Between { A. B., *Plaintiff*, *and* C. D., *Defendant*. }

Take notice that it is my intention to appeal to the Court of Queen's Bench [or *Exchequer of Pleas* or *Common Pleas*, as the case may be,] *against the direction of the said court in this suit.*

(*Signed*) A. B., *Plaintiff* [or *Defendant*].

To Mr. C. D., *the Defendant* [or *Plaintiff*] *in this suit.*

A copy of this notice should be kept, and although personal service is not directed, it should be made if possible. If not, by leaving the notice at his place of abode or with his attorney.

less, that such security, so far as regards the amount of the judgment, shall not be required in any case where the judge of the County Court shall have ordered the party appealing to pay the amount of such judgment into the hands of the clerk of the County Court in which such action shall have been tried, and the same shall have been paid accordingly; and the said Court of Appeal may either order a new trial on such terms as it thinks fit, or may order judgment to be entered for either party, as the case may be; and may make such order with respect to the costs of the said appeal as such court may think proper; and such orders shall be final.

Appeal to be in the form of a case agreed on by both parties, but if they cannot agree judge to settle and sign it.

15. And be it enacted, that such appeal shall be in the form of a case agreed on by both parties, or their attorneys, and if they cannot agree the judge of the County Court, upon being applied to by them or their attorneys, shall settle the case, and sign it; and such case shall be transmitted by the appellant to the rule department of the Master's office of the court in which the appeal is to be brought.

No certiorari, &c., to be allowed.

16. And be it enacted, that no judgment, order, or determination given or made by any judge of a County Court, nor any cause or matter brought before him or pending in his court, shall be removed by appeal, motion, writ of error, *certiorari*,[20] or otherwise, into any other court whatever, save and except in the manner and according to the provisions hereinbefore mentioned.

In certain cases, on agreement of the parties,

17. And be it enacted, that if both parties shall agree, by a memorandum signed by them or by their attorneys, that the County Court shall

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[20] *Certiorari* is, therefore, now abolished.

have power to try any of the actions hereinbefore respectively mentioned, in which the sum sought to be recovered shall exceed the sum of five pounds by the said recited act or fifty pounds by this act limited in the case of such actions respectively, or any action in which the title to land, whether of freehold, copyhold, leasehold, or other tenure, or to any tithe, toll, market, fair, or other franchise, shall be in question, then and in such case the said court shall have jurisdiction and power to try such action: provided always, that the said parties or their attorneys shall state in their said memorandum of agreement, that they know such cause of action to be above the said sums respectively, or that they know such title to come in question in such action, and provided that such memorandum shall be filed with the clerk of the said court at the time of filing the demand of the plaintiff: provided also, that all local actions to be tried before any County Court with the consent of the parties shall be brought and tried in that jurisdiction only in which the lands, tenements, or hereditaments, or some part thereof are situate, are in respect whereof such actions shall be brought.[21]

court shall have power to try causes, although the matters be beyond its jurisdiction.

18. And be it enacted, that if any party shall

No second suit in

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[21] This gives a jurisdiction *by consent* unlimited in *amount*, and extended to the trial of *title*, but no other exceptions from the jurisdiction of the County Court can be tried there by virtue of this clause, except title. The MEMORANDUM may be as follows:—

Memorandum of agreement made this day of , between A. B., *of , in the county of , and* C. D., *of , in the county of* . *Whereas disputes have arisen between the said* A. B. *and* C. D., *by reason of a certain demand by the said* A. B. *upon the said* C. D. *of a sum exceeding the sum of* 50*l.*, *to*

second court for the same cause. sue another in any County Court for any debt or other cause of action for which he hath already sued him and obtained judgment in any other court, the proof of such former suit having been brought and judgment obtained may be given, and the party so suing shall not be entitled to recover in such second suit, and shall be adjudged Treble costs. to pay three times the costs of such second suit to the opposite party.[22]

No action to be brought 19. And be it enacted, that from and after the passing of this act no action shall be brought

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wit, the sum of £ , in respect of a certain alleged [*debt* or *demand, trespass,* or as the case may be,] *it is hereby agreed between the said* A. B. *and* C. D. *that the County Court of* A., *at* B., *shall have power to try the said alleged* [*debt* or *demand, &c.*], *and the said* A. B. *and* C. D. *do hereby state that they know that such cause of action is above the sum of* 50*l*. *Witness the hands of the said parties.*

(*Signed*) A. B.,
C. D.

Witness ———.

And the following may be the form of the MEMORANDUM where title is intended to be tried:

Memorandum of agreement made this day of , 18 , *between* A. B. *of* , *in the County of* , *and* C. D. *of the same place* . *Whereas a dispute has arisen between* , *respecting the title* or [*which involves questions that relate to the title*], *to a certain* [here describe property in dispute], *it is hereby agreed between the parties hereto that the County Court of* , *in the County of* , *shall have power to try the same by an action in the said County Court, and the said* A. B. *and* C. D. *do hereby state that they know that such title will come in question in such action. Witness the hands of the said parties.* (*Signed*) A. B.
Witness ———. C. D.

[22] But it is presumed that the costs thus allowed will be the regular costs of the County Court trebled.

against any high bailiff or bailiff, or against any person or persons acting by the order and in aid of any high bailiff, for anything done in obedience to any warrant under the hand of the clerk or clerks of the said court and the seal of the said court, until demand hath been made or left at the office of such high bailiff by the party or parties intending to bring such action, or by his, her, or their attorney or agent, in writing signed by the party demanding the same, of the perusal and copy of such warrant, and the same hath been refused or neglected by the space of six days after such demand; and in case after such demand, and compliance therewith by showing the said warrant to and permitting a copy to be taken thereof by the party demanding the same, any action shall be brought against such high bailiff, bailiff, or other person or persons acting in his aid, for any such cause as aforesaid, without making the clerk or clerks of the said court who signed or sealed the said warrant defendant or defendants, that on producing or proving such warrant at the trial of such action the jury shall give their verdict for the defendant or defendants, notwithstanding any defect of jurisdiction or other irregularity in the said warrant; and if such action be brought jointly against such clerk or clerks and also against such high bailiff or bailiff, or person or persons acting in his or their aid, as aforesaid, then on proof of such warrant the jury shall find for such high bailiff or bailiff, and for such person or persons so acting as aforesaid, notwithstanding such defect or irregularity as aforesaid; and if the verdict shall be given against the said clerk or clerks, that in such case the plaintiff or plaintiffs shall recover his, her, or their costs against him or them, to be taxed in such manner by the proper officer as to include such costs as such plaintiff or plaintiffs are liable to pay to such

against bailiff, &c., acting under order of the court, without notice; and clerk of the court to be made defendant in the suit.

defendant or defendants for whom such verdict shall be found as aforesaid; and if any action shall be brought the defendant or defendants shall and may plead the general issue, and give the special matter in evidence at any trial had thereupon.[23]

So much of 9 & 10 Vict. c. 95, as requires a landlord, where rent is in arrear for premises wherein goods have been taken in execution, to state in writing the terms of holding, &c., repealed.

To entitle landlord to benefit under recited act, it shall be sufficient to state the amount of rent claimed, &c.

20. And whereas by the said act passed in the tenth year of Her present Majesty, intituled *An Act for the more easy Recovery of Small Debts and Demands in England*, it is enacted, that in cases of rent being in arrear in respect of premises wherein goods may have been taken in execution under and by virtue of the said act it should be lawful for the landlord, by writing to be delivered to the bailiff or officer making the levy, which writing should state the terms of holding and rent payable for the same, to claim any rent in arrear as therein mentioned: and whereas so much of the said enactment as requires that the claim of rent to be made by writing stating the terms of holding may lead to technical objections and unnecessary prolixity: and whereas also it is expedient to obviate certain difficulties which have arisen as to the landlord's right to priority of payment upon the construction of the said enactment: be it therefore enacted, that so much of the said

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[23] The object of this section is to protect the high bailiff when acting in obedience to his warrant. In such case the responsibility arising from a defect of jurisdiction or other irregularity in the warrant is thrown upon the clerk. But it is necessary that bailiffs should understand that this only protects them against the consequences of acting under an illegal process, and not in any act illegally done by them in the execution of that process. That liability still remains, subject only to the protection of notice of action, and the power to plead the general issue given by the section, which is very awkwardly worded, and may occasion some difficulty in construction.

act as requires that the said writing and claim should state the terms of holding shall be and is hereby repealed, and that it shall be a sufficient notice of claim to entitle the landlord to all the benefit given to landlords under the said act, that such writing and claim shall state the amount of the rent claimed to be in arrear and unpaid, and the time for and in respect of which such rent is claimed to be due, in like manner as is now required by law in cases of ordinary distress for rent, and no further or otherwise;[24] and also that no execution creditor under the said act or this act shall be satisfied his debt out of the proceeds of such execution and distress, or execution only where the tenant shall replevy, until the landlord who shall conform to the provisions of the said act as amended by this act shall have been paid the rent in arrear for the periods in the said act limited.

21. And be it enacted, that the enactments contained in the said act, as altered and amended in this act, relating to the claims of landlords for rent in arrear where goods on the premises demised have been taken in execution, shall apply and extend to goods taken in execution under the authority of this act, in as full and beneficial a manner as if the same enactments were re-enacted in the like terms in this act.[25]

Enactments of recited act as altered by this act, as to certain claims of landlords, to extend to goods taken in execution.

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[24] This provision removes a great practical inconvenience in the claims of landlords for rent, against tenants whose goods are taken in execution. It would suffice now in such notice to state the amount of rent due, and the time in respect of which it is claimed.

[25] We cannot see the use of this clause, inasmuch as a former one extends all the provisions of the former statutes to this one, unless expressly repealed or repugnant.

Judges may hear applications for writs of prohibition either in term or in vacation.

22. And be it enacted, that it shall be lawful for any judge of any of Her Majesty's Superior Courts of Common Law at Westminster, as well in term time as in vacation, to hear and determine applications for writs of prohibition directed to the judges of the said County Courts, and to make such rules or orders for the issuing of such writs as might have been made by the court, and all such rules or orders so made by any such judge shall have the same force and effect as rules of court for such purposes now have, and such writs shall be issued by virtue of such rules or orders as well in term time as in vacation: provided always, that any rule or order made by any such judge, or any writ issued by virtue thereof, may be discharged or varied or set aside by the court, on application made thereto by any party dissatisfied with such rule or order.

Before whom affidavits may be sworn.

23. And be it enacted, that all affidavits to be used in the courts holden under the said act of the tenth year of Her Majesty shall and may be sworn before any judge of the said courts, or any Master Extraordinary in Chancery, or Commissioner for taking Affidavits in any of the Superior Courts of Westminster, or before a magistrate of the county, city, town, or place where any such affidavit may be sworn.[26]

Town halls, &c., to be

24. And be it enacted,[27] that in every town or

[26] This is a useful provision, as it removes a doubt which had been raised as to the proper authority to take an affidavit for the County Courts.

[27] For some unexplained reason this useful clause was first struck out by the House of Lords, then restored by the House of Commons, and finally amended after a conference of the two Houses. But it is to be hoped that ere long every court town will have a County Court erected, with the necessary accommodations for the vast and varied business that will henceforth be transacted there.

place where there shall be a court holden under the provisions of the said act of the tenth year of Her Majesty, the Town-hall, Court-house, or other public building belonging to any county, city, borough, or town shall be used for the purposes of holding the courts under the said act, without any charge for rent or other payment, save and except the reasonable and necessary charges for lighting, warming, and cleaning when such public building is used for the purpose of the courts, and for all other expenses necessarily incidental to the use of the said building for the purposes of the courts: provided always, that the necessary arrangements shall be made so that the sittings of the said courts shall not interfere with the business of the county, city, borough, or town usually transacted in such Town-hall, Court-house, or other public building, or with any purposes for which such Town-hall, Court-house, or other public building may be used by virtue of any local act in that behalf: provided also, that this enactment shall not apply to any city, borough, or town in which a building hath previously to the passing of this act been erected for the purposes of holding the courts under the said act and for the business connected with such courts, nor shall anything in this act contained be held, deemed, or taken to prejudice, affect, or otherwise interfere with any lease, contract, agreement, or engagement already entered into for the leasing, erection, hiring, or occupation of any building for the purposes of holding such courts therein and transacting therein the business relating to such courts.

used free of rent-charge for sittings of County Court.

25. And be it enacted, that this act may be amended or repealed by any act to be passed in this session of Parliament.

Act may be amended or repealed.

RULES

MADE BY

MR. SERJEANT DOWLING,

THE JUDGE OF THE YORK CIRCUIT,

For carrying into effect the County Courts Extension Act, 13 & 14 Vict. c. 61, within his Circuit, and Forms prepared under the same Act.

(*Rules as to sect.* 8.)

1. All confessions to be made under section 8 of the 13 & 14 Vict. c. 61, shall be delivered to the Clerk five clear days before the return of the summons.

2. The clerk shall give to the plaintiff a notice of such confession, in manner directed by the act, three clear days before the return of the summons.

(*Rules as to sect.* 14.)

3. Any party dissatisfied with the determination or direction of the court, in point of law, or upon the admission or rejection of any evidence, shall, before the rising of the Court on the day of the trial, deliver to the Clerk a statement in writing, signed by him, his counsel or attorney, containing the grounds of his dissatisfaction; and in default of such statement being delivered as aforesaid, the successful party may proceed on the judgment, unless the Judge shall otherwise order; but it shall be competent for the Judge to direct proceedings to be taken on the judgment, notwithstanding such statement has been delivered: provided always, that the party so dissatisfied may appeal on grounds other and different from those contained in such statement.

4. The ten days' notice of appeal shall be reckoned exclusive of the day of trial, and must be served on the clerk as well as the successful party, by post or otherwise.

5. If before notice of appeal as last aforesaid is served upon the Clerk, execution shall have issued and the amount of the judgment and costs of execution shall have been paid into the hands of the Bailiff, or levied and not paid over to the successful party, the same shall remain in Court to abide the order of the Court.

6. If before an appealing party shall have given the required security execution shall have issued, the Clerk shall, upon the appealing party giving such security, forthwith send notice thereof by post or otherwise to the Bailiff, and proceedings on such execution shall forthwith be stayed.

7. The notice of appeal shall state the grounds of the appellant's dissatisfaction; and in default thereof, the successful party shall be at liberty to proceed on the judgment, unless the Judge shall otherwise order.

8. The security on appeal, required under section 14 of the 13 & 14 Vict. c. 61, may in all cases be either a deposit of money or a bond executed by the appellant and two sureties, conditioned in conformity with the provisions of the statute, and which shall be substantially in the form Number 4 in the schedule hereunto annexed.

9. In all cases of appeal, where the appellant proposes to give a bond, he shall serve by post or otherwise, on the opposite party and the Clerk, notice of the sureties whom he proposes to submit for the approval of the Clerk; and such notice shall contain the matters stated in the form Number 3 in the schedule hereunder annexed.

10. The sureties shall, unless by consent of the successful party, make an affidavit of their sufficiency in the form Number 2 in the schedule hereunto annexed.

11. The affidavit of sufficiency may be made before any of the authorities stated in 13 & 14 Vict. c. 61, s. 23, as persons before whom affidavits may be sworn.

12. The bond shall be executed in the presence of the Clerk, or some one of the authorities last mentioned: provided always, that if it be executed in the presence of the Clerk, it shall not be necessary for him to attest the same.

13. At the time of giving security the appellant shall deliver to the Clerk a statement in writing, showing to which of the courts of common law at Westminster he proposes to appeal.

14. The successful party shall be the obligee of the bond, and it shall be deposited with the Clerk until the cause is finally disposed of.

15. Where the appellant makes a deposit of money in lieu of giving a bond, he shall forthwith give notice to the opposite party, by post or otherwise, of such deposit having been made.

16. Where money is paid into Court to abide the event of an appeal, whether by way of security or in pursuance of an order of the Judge, the Clerk shall give the party paying it a certificate of such payment, in the form Number 1 in the schedule hereunder annexed.

17. All cases shall be signed by the Judge, and sealed with the seal of the Court; and when signed and sealed, one copy thereof shall be deposited with the Clerk, and another sent by post or otherwise, by the appellant, to the successful party within three clear days next after the time of signing and sealing the same; and if the appellant does not comply with this rule, the successful party may proceed on the judgment, unless the Judge shall otherwise order.

18. The appellant shall, within three days next after the case is signed and sealed, transmit it, by post or otherwise, in conformity with the provisions of sect. 15 of the 13 & 14 Vict. c. 61; and notice of such transmission shall forthwith be given by the appellant to the successful party, by post or otherwise; in default whereof the successful party may proceed on the judgment.

19. When the Court of Appeal has pronounced judgment, either party may deposit the original order of the Court of Appeal, or an office copy thereof, with the clerk.

20. All new trials in pursuance of the order of the Court of Appeal shall take place at the next practicable Court after such order or office copy shall have been deposited as aforesaid, unless the Judge shall otherwise order, and it shall be conducted in the same manner as any new trial granted by the County Court itself.

21. If the order be that judgment shall be entered for either party, then such judgment shall be entered accordingly, and the successful party shall be at liberty to proceed on such judgment as upon an original judgment of the County Court.

22. If after the case has been transmitted, the appellant does not prosecute his appeal with due diligence, according to the practice of the Court of Appeal, the party successful in the County Court may apply to the Judge for leave to proceed on the judgment, and leave for that purpose may be granted accordingly, if the Judge shall think fit.

(*Rule as to sect.* 17.)

23. In all cases where jurisdiction is given to the County Court by agreement of the parties, pursuant to stat. 13 & 14 Vict. c. 61, s. 17, the memorandum of agreement filed with the clerk of the Court shall contain a summary statement of the points or matters in dispute: provided always, that the Judge at the trial, in his discretion, and on such terms as he shall think fit, may allow such statemert to be amended

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THE SCHEDULE before referred to.

[1.]

Certificate of Deposit. (Rule 16.)

In the County Court of holden at
(Seal.)

Between { *A. B.*, Plaintiff, and *C. D.*, Defendant.

I do hereby certify that in the above cause has paid into my hands the sum of £ to abide the event of an appeal of which the said has given notice in the above cause to be determined by the Court of .

A. B.,
Clerk of Court.

[2.]

Affidavit of Justification. (Rule 10.)

In the County Court of holden at

Between { *A. B.*, Plaintiff, and *C. D.*, Defendant.

B. B., of one of the bondsmen for the above-named defendant, maketh oath and saith that he is a housekeeper [or freeholder, *as the case may be*], residing at [*describing particularly the county or city, the street or place, and the number of*

the house, if any], that he is worth property to the amount of £ [*the amount required by the practice of the Court*] over and above what will pay his just debts [*if security in any other action add*] and every other sum for which he is now security, that he is not bail or security in any other action or proceeding [*or if security in any other action or actions, add*], (except for *C. D.*, at the suit of *E. F.*, in the Court of in the sum of £ ; for *G. H.*, at the suit of *I. K.*, in the Court of in the sum of £ [*specifying the several actions, with the Courts in which they are brought, and the sums in which the deponent is security*]); that this deponent's property, to the amount of the said sum of £ [*and if security in any other action or actions*], (over and above all other sums for which he is now security as aforesaid), consists of [*here specify the nature and value of the property in respect of which the deponent proposes to become bondsman, as follows*] stock in trade in his business of carried on by him at of the value of £ of good book debts, owing to him to the amount of £ of furniture in his house at of the value of £ of a freehold (*or* leasehold) farm of the value of £ situate at occupied by *or* of a dwelling-house of the value of £ situate at occupied by (*or of other property particularising each description of property, with the value thereof*), and that this deponent hath for the last six months resided at [*describing the place of such residence, or if he has had more than one residence during that period, state it.*]

[3.]

Notice of Sureties. (Rule 9.)

In the County Court of

Between { *A. B.*, Plaintiff, and *C. D.*, Defendant.

Take notice, that the bondsmen whom I propose as my securities on the appeal in the above cause are [*here state the full names and additions of the bondsmen, whether housekeepers or freeholders, and their residences for the last six months, therein mentioning the county or city, places, streets, and numbers, if any.*]

[4.]

Form of Bond where the Plaintiff is Appellant.

(Rule 8.)

Know all men by these presents, that we *A. B.*, of, &c., and *C. D.*, of, &c., and *E. F.*, of, &c., are jointly and severally held and firmly bound to *G. H.*, of, &c., in £ of good and lawful money of Great Britain, to be paid to the said *G. H.*, or his certain attorney, executors, administrators or assigns. For which payment to be made, we bind ourselves, and each and every of us, in the whole, our, and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.*

Scaled with our seals, and *dated* this day of one thousand eight hundred and fifty

Whereas an action is now depending in the County Court of holden at wherein the above-bounden *E. F.* is plaintiff, and the above-named *G. H.* is defendant. *And whereas* the said action came on to be tried in the said court on the day of when a judgment was given for the said *G. H.*

And whereas the said *E. F.*, being dissatisfied with such judgment, gave due notice to the said *G. H.* of his the said *E. F.'s* intention to appeal from the same to Her Majesty's Court of at Westminster, in the manner provided by an Act of the 13th and 14th years of Her present Majesty's reign, c. 61, s. 14. *And whereas* it is by the same section of the said Act provided, that the party who shall appeal as aforesaid shall give security, to be approved by the Clerk of the Court aforesaid, for the costs of the appeal, whatever be the event thereof. *And whereas* the above-named *A. B.* and *C. D.*, at the request of the said *E. F.*, have agreed to enter into the above-written obligation for the purposes aforesaid, and the security intended to be hereby given, has been approved of by the Clerk of the said County Court, as appears by his allowance in the margin hereof. *Now the condition* of this obligation is such, that if the above-bounden *A. B.*, *C. D.*, and *E. F.*

* A sum sufficient to cover the *costs of appeal*, say £20, being double the estimated amount.

or either of them, shall pay unto the said *G. H.*, his executors, administrators, or assigns, the costs of the said appeal, as the said Court of Appeal shall order, then this present obligation shall be void, otherwise shall remain and be in full force.

I approve of the bond, *A. B.* (Seal.)
I. K. *C. D.* (Seal.)
[Seal of Court.] *E. F.* (Seal.)

[5.]

Form of Bond where the Defendant is Appellant.

(Rule 8.)

Know all men by these presents that we, *A. B.*, of, &c., and *C. D.*, of, &c., and *E. F.*, of, &c, are jointly and severally held and firmly bound to *G. H.*, of, &c., in £ of good and lawful money of Great Britain, to be paid to the said *G. H.*, or his certain attorney, executors, administrators, or assigns. For which payment to be made we bind ourselves and each and every of us, in the whole, our, and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.*

Sealed with our seals, and *dated* this day of one thousand eight hundred and fifty

Whereas an action is now depending in the County Court of holden at wherein the above-named *G. H.* is plaintiff, and the above-bounden *E. F.* is defendant. *And whereas* the said action came on to be tried in the said Court on the day of *last*, when a judgment was given for the said *G. H.*, for the sum of £

And whereas the said *E. F.*, being dissatisfied with such judgment, gave due notice to the said *G. H* of his the said *E. F.'s* intention to appeal from the same to Her Majesty's Court of at Westminster, in the manner provided by an Act of the 13th and 14th years of Her present Majesty's reign, c. 61, s. 14. *And*

* A sum sufficient to cover the *costs of appeal*, say £20, being double the estimated amount, and also double the amount of verdict.

whereas it is by the same section of the said Act provided, that the party who shall appeal, as aforesaid, shall give security, to be approved by the Clerk of the Court aforesaid, for the costs of the appeal, whatever be the event thereof, and also for the amount of the judgment if such party be the defendant, and the appeal be dismissed. *And whereas* the above-named *A. B.* and *C. D*, at the request of the said *E. F.*, have agreed to enter into the above-written obligation, for the purposes aforesaid, and the security intended to be hereby given has been approved of by the Clerk of the said County Court, as appears by his allowance in the margin hereof. *Now the condition* of this obligation is such, that if the above-bounden *A. B.*, *C. D.*, and *E. F.*, or either of them, shall pay unto the said *G. H.*, his executors, administrators, or assigns, the costs of the said appeal, as the said Court of Appeal shall order [and shall also, in case the said appeal shall be dismissed, pay to the said *G. H.*, his executors, administrators, or assigns, the said sum of £ *] then this obligation shall be void, otherwise shall remain and be in full force and virtue.

I approve of the bond,	*A. B.*	(Seal.)
I. K.	*C. D.*	(Seal.)
[Seal of Court.]	*E. F.*	(Seal.)

[6.]

Form of Case. (Rule 17.)

In the County Court of holden at
(Seal.)
On appeal to the Court of

Between { *A. B.*, Plaintiff, and *C. D.*, Defendant.

This is an action of [*here insert the cause of action and the facts*]
The question for the opinion of the Court of is—
First. [*here state the question for the opinion of the Court.*]

[*Signature of Judge.*]

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* To be omitted, if amount previously paid into Court.

[7.]

Form of Admission of Debt, or part of Debt, under sect. 8, 13 *&* 14 *Victoria, cap.* 61.

[A.] No. of Plaint.

In the County Court of holden at

Between { *A. B.*, Plaintiff, and *C. D.*, Defendant.

I, the above-named defendant, do hereby confess and admit that the sum of £ the amount claimed* by the plaintiff in this action, is due to him from me.

Dated this day of one thousand eight hundred and fifty

Signed in the presence of the above-named defendant.

* Or part of the amount claimed.

This paper marked A. *is the statement referred to in the annexed Affidavit.*

[8.]

Affidavit of Signature to Admission, sect. 8.

No. of Plaint.

In the County Court of holden at

Between { *A. B.*, Plaintiff, and *C. D.*, Defendant.

E. F. of gentleman, an attorney of Her Majesty's Court of at Westminster, maketh oath and saith, that he was present on the day of one thousand eight hundred and fifty , and did see the above-named defendant sign the statement hereunto annexed, marked with the letter A., and that the name set to the said statement is in the handwriting of the defendant and that the name set to the said statement as the witness attesting the same is in the handwriting of him this deponent.

Sworn at in the county of this day of one thousand eight hundred and fifty before me .

[9.]

Notice to Plaintiff under sect. 8.

No. of Plaint.

In the County Court of holden at

Between { *A. B.*, Plaintiff, and *C. D.*, Defendant.

I do hereby give you notice, that the above-named defendant had filed a statement confessing and admitting the amount claimed by you, and that it will not be necessary for you to prove the debt on the day of hearing; but you must attend the Court to apply to the Judge for an order for payment.

Dated this day of one thousand eight hundred and fifty

Clerk of the Court.

To the above-named plaintiff.

[10.]

Notice to Plaintiff under sect. 8 *of Admission of part of Claim.*

No. of Plaint.

In the County Court of holden at

Between { *A. B.*, Plaintiff, and *C. D.*, Defendant.

I do hereby give you notice that the above-named defendant has filed a statement confessing and admitting £ part of the amount claimed by you, and that it will not be necessary for you to prove that part of your claim which the defendant has so admitted, on the day of hearing. If, however, you do not consent to accept the sum so admitted in satisfaction of your demand, you must be prepared to prove the excess; but at all events you must attend the Court to apply to the Judge for an order for payment.

Dated this day of one thousand eight hundred and fifty

Clerk of the Court.

To the above-named plaintiff.

[11.]

Form of Admission under sect. 9, 13 *&* 14 *Vict. c.* 61.

No. of Plaint.

In the County Court of holden at

Between { *A. B.*, Plaintiff, and *C. D.*, Defendant.

We, the above-named *A. B.* and *C. D.*, do hereby agree that the amount of the debt or demand due from the defendant to the plaintiff is pounds, shillings, and pence, and that the same, together with £ the costs, shall be paid to the Clerk of the Court at his office, in manner following, viz.:—

—— } Signatures of Plaintiff
—— } and Defendant.

Dated this day of one thousand eight hundred and fifty.

Signed in the presence of

This paper marked A. *is the statement referred to in the annexed Affidavit.*

[12.]

Affidavit of Signature under sect. 9, 13 *&* 14 *Vict. c.* 61.

No. of Plaint.

In the County Court of holden at

Between { *A. B.*, Plaintiff, and *C. D.*, Defendant.

E. F., of gentleman, an attorney of Her Majesty's Court of at Westminster, maketh oath and saith that he was present on the day of one thousand eight hundred and fifty , and did see the above-named plaintiff and defendant respectively sign the statement hereunto annexed, marked with the letter A., and that the name set to the said statement is in the handwriting of the said plaintiff and that the name set to the said statement is in the handwriting of the said defendant and that the name set to the said statement as the witness attesting the same is in the handwriting of him this deponent.

Sworn at in the county of this day of one thousand eight hundred and fifty before me

[13.]

Judgment against Defendant for Payment of Debt or Damages.

No.

In the County Court of holden at

Between { *A. B.*, Plaintiff, and *C. D.*, Defendant.

By virtue of a statement in writing signed by the above-named plaintiff and defendant respectively on the day of one thousand eight hundred and fifty , in pursuance of the provisions of an Act of the 13 & 14 Vict. c. 61; it is adjudged, that the said plaintiff do recover against the said defendant, the sum of for his debt, together with the costs of suit, amounting to the sum of to be paid by the said defendant to the Clerk of the Court at his office, on or before the day of one thousand eight hundred and fifty

Given under the seal of the Court, this day of one thousand eight hundred and fifty

By the Court,

Clerk.

Attendance at the office from ten till four o'clock.

[14.]

Judgment against Defendant for Immediate Payment of Debt or Damages.

No.

In the County Court of holden at

Between { *A. B.*, Plaintiff, and *C. D.*, Defendant.

By virtue of a statement in writing signed by the above-named plaintiff and defendant respectively on the day of one thousand eight hundred and fifty , in pursuance of the provisions of an act of the 13 & 14 Vict. c. 61, it is adjudged that the said plaintiff do recover against the said defendant, the sum of for his debt, together with the costs of

suit, amounting to the sum of to be paid by the said defendant to the Clerk of the Court at his office, *immediately.*

Given under the seal of the Court, this day of one thousand eight hundred and fifty

By the Court, Clerk.

Attendance at the office from ten till four o'clock.

[15.] *Judgment against Defendant when the Debt or Damages are made payable by Instalments.*

No.

In the County Court of holden at

Between A. B., Plaintiff, and C. D., Defendant.

By virtue of a statement in writing signed by the above-named plaintiff and defendant respectively, on the day of one thousand eight hundred and fifty , in pursuance of the provisions of an Act of the 13 & 14 Vict. c. 61, it is adjudged, that the said plaintiff do recover against the said defendant the sum of for his debt in a certain action, together with the costs of suit, amounting to the sum of by instalments of the first instalment to be paid upon the day of one thousand eight hundred and fifty . Such payments to be paid at the office of the Clerk of the Court, at

Given under the seal of the Court, this day of thousand eight hundred and fifty.

By the Court, Clerk.

Office hours, from ten to four.

[16.] *Summons to Defendant after Judgment under sect.* 9 *of* 13 *&* 14 *Vict. c.* 61.

No.

In the County Court of at

Between A. B., Plaintiff, and C. D., Defendant.

Whereas by virtue of a statement in writing signed by the above-named plaintiff and defendant respectively on the day of one thousand eight hundred and fifty in pur-

suance of the provisions of an Act of the 13 & 14 Vict. c. 61, the above-named plaintiff obtained a judgment against you for the payment of for which said judgment still remains unsatisfied; you are therefore hereby summoned to appear at the County Court to be holden at in on the day of 185 , at the hour of in the forenoon, to be then and there examined by the Judge of the said Court, touching your estate and effects, and the manner and circumstances under which you contracted the debt, which was the subject of the action in which the said judgment was obtained against you, and as to the means and expectation you then had, and as to the property and means you still have of discharging the said debt, and as to the disposal you may have made of any property. And take notice, that if you do not appear in obedience to this summons, you may, by order of this Court, be committed to the common gaol.

Given under the seal of the Court, this day of 185 .

By the Court,

Clerk.

	£		
Amount of judgment or order .			
Costs of this summons . . .			

To the above-named defendant.

[17.]

Warrant of Commitment after Examination.

Execution No.

No.

In the County Court of holden at .

Between { *A. B.*, plaintiff, and *C. D.*, defendant.

To the High Bailiff and the other Bailiffs of the said Court, and all constables and peace officers within the jurisdiction of the said Court, and to the Governor or Keeper of the common gaol for the county of , at , in the said county.

Whereas by virtue of a statement in writing signed by the above-named plaintiff and defendant respectively on the day

of in the year of our Lord one thousand eight hundred and fifty , in pursuance of the provisions of an act of the 13 & 14 Vict. c. 61, the above-named plaintiff, by the judgment of the said Court in a certain suit wherein the said Court had jurisdiction, thereupon recovered against the above-named defendant the sum of pounds shillings and pence for his debt, together with the sum of pounds shillings and pence, the costs of the said suit, to be paid by the said defendant on or before the day of .

And whereas the said defendant not having paid the said sums of pounds shillings and pence, and pounds shillings and pence, pursuant to the said judgment, upon the application of the said plaintiff, a summons was duly issued from and out of the said Court against the said defendant, by which said summons the said defendant was required to appear at the said County Court of at , on the day of one thousand eight hundred and fifty , to answer such questions as might be put to him touching his estate and effects, and the manner and circumstances under which he contracted the said debt, which was the subject of the action in which the said judgment was obtained against him, and as to the means and expectation he then had, and as to the property and means he still had of discharging the said debt, and as to the disposal he might have made of any property.

And whereas the defendant having duly appeared at the said Court pursuant to the said summons, was examined touching his estate and effects and the manner and circumstances under which he contracted the said debt, which was the subject of the action in which the said judgment was obtained against him, and as to the means and expectation he then had, and as to the property and means he still had of discharging the said debt, and as to the disposal he might have made of any property.

And whereas it appeared upon such examination, to the satisfaction of the Judge of the said Court, that and thereupon it was ordered by the said Judge, that the said defendant should be committed for the term of days to the common gaol for the county of , at aforesaid, according to the

form of the statute in that case made and provided, or until he should be discharged by due course of law.

These are therefore to require you, the said High Bailiff, Bailiffs and others, to take the said defendant, and to deliver him to the governor of the common gaol, and you the said governor are hereby required to receive the said defendant, and him safely to keep in the said common gaol for the term of days from the arrest under this warrant, or until he shall be duly discharged by due course of law. For which this shall be your sufficient warrant.

Given under the seal of the Court, this day of one thousand eight hundred and fifty .

Clerk of the said Court.

	£	s.	d.
Amount of original debt and costs ...			
Execution			
Further costs, complaint			
Commitment			
Mileage			
Paying money into court			
	£		

[18.]

Execution against the Goods of Defendant.

Execution No.

No.

In the County Court of holden at

Between { *A. B.*, Plaintiff, and *C. D.*, Defendant.

Whereas by virtue of a statement in writing signed by the above-named plaintiff and defendant respectively on the day of one thousand eight hundred and fifty in pursuance of the provisions of an Act of the 13 & 14 Vict. c. 61, the said plaintiff by the judgment of the said Court thereupon recovered against the said defendant the sum of pounds, shillings, and pence, for a certain debt before that time

due and owing to the said plaintiff, together with the sum of pounds shillings and pence, the costs of suit by the said plaintiff in that behalf expended, amounting together to the sum of pounds shillings and pence, to be paid by the said defendant on or before the day of one thousand eight hundred and fifty.

And whereas the said sum of pounds shillings and pence has not been paid pursuant to the said judgment. These are therefore to require and order you forthwith to make and levy by distress and sale of the goods and chattels of the said defendant, wheresoever they may be found within the district of this Court (excepting the wearing apparel and bedding of the said defendant or his family, and the tools and implements of his trade, if any, to the value of five pounds), the said sum of pounds shillings and pence, and also the costs of this execution; and also to seize and take any money or bank-notes (whether of the Bank of England or of any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties or securities for money, of the said defendant, which may be there found, or such part or so much thereof as may be sufficient for the satisfying of this execution and the costs of making and executing the same.

Given under the seal of the Court, this day of one thousand eight hundred and fifty

By the Court,

Clerk of the said Court.

To High Bailiff of the said Court, and other the Bailiffs thereof.

	£	s.	d.
Debt			
Costs			
Execution			
Paid into Court			
Paying money into Court, &c.			
	£		

Notice.—The goods and chattels are not to be sold until after the

end of five days next following the day on which they may have been taken, unless they be of a perishable nature, or at the request of the said defendant.

[In cases of cross-judgments, the execution must be stated to be for the balance.]

[19.]

Form of Consent, under sect. 17, 13 *&* 14 *Vict. c.* 61.

No. of Plaint.

Memorandum.

We, the undersigned *A. B.*, of and *C. D.*, of (or *E. F.*, attorney for *A. B.*, and *G. H.*, attorney for *C. D.*) do consent and agree that a plaint may be entered in the County Court of holden at by the said *A. B.* against the said *C. D.*, *for the* [cause of action], and that the said Court shall have power to try the said action. And we declare that we know that the sum sought to be recovered in the said action exceeds 50*l.* or (*the title to land, or to tithe, or to toll, or to a market, or to a fair, or to a certain franchise*), is in question in the said action.

Dated this day of one thousand eight hundred and fifty

A. B.
C. D.

13 & 14 VICT. CAP. 115.

An Act to consolidate and amend the Laws relating to Friendly Societies.—[*15th August*, 1850.]

Sect. 22. *Disputes between society and trustees to be settled according to rules—Questions of equity to be settled by County Court, or Sheriff Court of Scotland.*—And be it enacted, that if any dispute shall arise between the members, or person claiming under or on account of any member, of any society or branch established under this act, and the trustees, treasurer, or other officer or committee thereof, it shall be settled in such manner as the rules of such society or branch shall direct, and the decision so made shall be binding and conclusive; but if such dispute be of such kind that for the settlement of it, according to the laws now in force, recourse must be had to one of Her Majesty's courts of equity, or to the Court of Session, it may be referred, at the option of either party, to the judge of the County Court or of the Sheriff Court in Scotland, who shall proceed *ex parte*, on notice in writing to the other of the said parties being left at his usual place of residence or abode ten days previously; and he is hereby authorized to require of all parties who are or may have been members, trustees, or officers of such society to produce before him all books or other documents relating to the concerns of such society; and thereupon, if he shall so think fit, it shall be lawful for him to determine the said dispute, and to displace any such trustee or officer, or to make such award as the justice of the case, in his opinion, may require, and such decision or award shall be binding and conclusive.

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TO THE

COUNTY COURTS EXTENSION ACT.

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